


ARKANSAS CODE
OF 1987
ANNOTATED

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ARKANSAS CODE OF 1987 ANNOTATED



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TITLE 8: ENVIRONMENTAL LAW

Prepared by the Editorial Staff of the Publisher

Under the Direction and Supervision of the
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Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2018 Fiscal Session and the 2018 Second Extraordinary Session. Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions
Federal Supplement
Federal Reporter
United States Supreme Court Reports
Bankruptcy Reporter
Arkansas Law Notes
Arkansas Law Review
University of Arkansas at Little Rock Law Review
American Law Reports (ALR)

Titles of the Arkansas Code

1. General Provisions
2. Agriculture
3. Alcoholic Beverages
4. Business and Commercial Law
5. Criminal Offenses
6. Education
7. Elections
8. Environmental Law
9. Family Law
10. General Assembly
11. Labor and Industrial Relations
12. Law Enforcement, Emergency Management, and Military Affairs
13. Libraries, Archives, and Cultural Resources
14. Local Government
15. Natural Resources and Economic Development
16. Practice, Procedure, and Courts
17. Professions, Occupations, and Businesses
18. Property
19. Public Finance
20. Public Health and Welfare
21. Public Officers and Employees
22. Public Property
23. Public Utilities and Regulated Industries
24. Retirement and Pensions
25. State Government
26. Taxation
27. Transportation
28. Wills, Estates, and Fiduciary Relationships

User's Guide

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1A of the Code.

TITLE 8

ENVIRONMENTAL LAW

CHAPTER.

1. GENERAL PROVISIONS.
2. ENVIRONMENTAL TESTING.
3. WATER AND AIR POLLUTION GENERALLY.
4. ARKANSAS WATER AND AIR POLLUTION CONTROL ACT.
5. WATER POLLUTION CONTROL FACILITIES.
6. DISPOSAL OF SOLID WASTES AND OTHER REFUSE.
7. HAZARDOUS SUBSTANCES.
8. INTERSTATE COMPACTS.
9. RECYCLING.
10. POLLUTION PREVENTION.
11. ARKANSAS ENVIRONMENTAL REGULATORY FLEXIBILITY ACT.
12. NATURAL RESOURCES DAMAGES TRUST FUND ACT.
13. MANAGEMENT ORGANIZATION.
14. SHIELDED OUTDOOR LIGHTING ACT.
15. PROPERTY ASSESSED CLEAN ENERGY ACT.

RESEARCH REFERENCES

Ark. L. Notes. Kelley, An Annotated Law Resources of Interest to Practicing
Bibliography of Selected Environmental Attorneys, 1995 Ark. L. Notes 111.

CHAPTER 1

GENERAL PROVISIONS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. POWERS OF THE DEPARTMENT AND COMMISSION.
3. ENVIRONMENTAL AUDIT REPORTS.

RESEARCH REFERENCES

Ark. L. Notes. Kelley, An Annotated Law Resources of Interest to Practicing
Bibliography of Selected Environmental Attorneys, 1995 Ark. L. Notes 111.

U. Ark. Little Rock L.J. Legislative
Survey, Environmental Law, 16 U. Ark.
Little Rock L.J. 111.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 8-1-101. Purpose.
- 8-1-102. Definitions.
- 8-1-103. Powers and duties.
- 8-1-104. Existing rules and regulations.

SECTION.

- 8-1-105. Arkansas Department of Environmental Quality Fee Trust Fund.
- 8-1-106. Definitions — Disclosure state-

SECTION.

ments — Denial of application — Appeal — Regulations.

vestigations — Inspection warrant — Exceptions — Penalties.

8-1-107. Inspections — Definitions — In-

Effective Dates. Acts 1991, No. 454, § 6: Mar. 11, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Director of the Department of Pollution Control and Ecology is in need of additional authority to deny applications for the issuance or transfer of permits if he determines that an applicant, or person with substantial influence over the applicant, has a history of noncompliance with environmental laws or regulations; this act provides such authority and should be given immediate effect in order to grant additional environmental protection as soon as possible. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the protection of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1254, § 9: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of this act are of critical importance to the state's ability to provide efficient and effective programs in the protection of the state's environment as mandated through the activities of the Department of Pollution Control and Ecology. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1995, No. 509, § 7: Mar. 2, 1995. Emergency clause provided: "It is hereby

found and determined by the General Assembly of the State of Arkansas that an adjustment is needed to adjust the collection cap due to additional fees to be generated by the permitting of composting facilities and transfer stations, and to clarify cost recovery authorization for administrative services provided by the Department of Pollution Control and Ecology. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 2007, No. 1281, § 52: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2007 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2007 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2007."

8-1-101. Purpose.

(a) It is the purpose of this chapter to authorize the Arkansas Pollution Control and Ecology Commission to establish a system of fees for the issuance of permits required by §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, 8-4-301 — 8-4-314, 8-6-201 — 8-6-212, 8-6-213 [repealed], 8-6-214, 8-6-215 — 8-6-217 [superseded], and 8-9-403, to defray costs of other services provided and to authorize the Arkansas Department of Environmental Quality to collect and enforce these fees.

(b) The express purpose of these fees shall be to defray the administrative costs of issuance, renewal, inspection, modification, and monitoring associated with these permits and other services provided.

History. Acts 1983, No. 817, § 1; A.S.A. 1947, § 82-1916; Acts 1993, No. 163, § 1; 1993, No. 165, § 1; 1995, No. 509, § 1; 1999, No. 1164, § 3.
A.C.R.C. Notes. Sections 8-6-215 — 8-6-217 have been superseded by § 8-1-106.

8-1-102. Definitions.

As used in this chapter:

(1) “Annual review fee” means that fee required by this chapter to be submitted upon the anniversary date of issuance of the permits required by the statutes enumerated in subdivision (6) of this section;

(2) “Commission” means the Arkansas Pollution Control and Ecology Commission;

(3) “Department” means the Arkansas Department of Environmental Quality;

(4) “Director” means the executive head and active administrator of the Arkansas Department of Environmental Quality;

(5) “Facility” means any activity or operation within a specific geographic location, including property contiguous thereto. A facility may consist of several treatment, storage, or disposal operational units;

(6) “Initial fee” means that fee required by this chapter to be submitted with all applications for water, air, and solid waste permits required by §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, 8-4-301 — 8-4-314, 8-6-201 — 8-6-212, 8-6-213 [repealed], 8-6-214, 8-6-215 — 8-6-217 [superseded], or 8-9-403; and

(7) “Modification fee” means the fee required to be submitted by this chapter for modification of any existing or future permit required by the statutes enumerated in subdivision (6) of this section, either at the request of the permittee or as required by the laws of the State of Arkansas or the rules and regulations of the department.

History. Acts 1983, No. 817, § 2; A.S.A. 1947, § 82-1917; Acts 1993, No. 163, § 2; 1993, No. 165, § 2; 1995, No. 509, § 2; 1999, No. 1164, § 4.
A.C.R.C. Notes. Sections 8-6-215 — 8-6-217 have been superseded by § 8-1-106.

8-1-103. Powers and duties.

The Arkansas Department of Environmental Quality and the Arkansas Pollution Control and Ecology Commission shall have the following powers and duties, respectively:

(1)(A) Following a public hearing and based upon a record calculating the reasonable administrative costs of evaluating and taking action on permit applications and of implementing and enforcing the terms and conditions of permits and variances, the commission shall establish, by regulation, reasonable fees for initial issuance, annual review, and modification of water, air, or solid waste permits required

by §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, 8-4-301 — 8-4-314, 8-6-201 — 8-6-212, 8-6-213 [repealed], 8-6-214, 8-6-215 — 8-6-217 [superseded], and 8-9-403. These fees shall consist of initial fees, annual review fees, and modification fees, as defined in § 8-1-102.

(B)(i) All fees will be capped at no more than the appropriation. Provided, however, in setting reasonable permit fees, the commission shall:

(a)(1) Set water permit fees calculated to generate revenues in any fiscal year greater than three and twenty-five hundredths (3.25) times the total amount collected from water permit fees in fiscal year 1992-1993.

(2) Provided, water permit fee revenues generated through permits issued for new facilities which are permitted after July 1, 1995, shall not be subject to the overall fee cap specified for water permit fees herein;

(b)(1) Effective July 1, 2000, set water permit fees calculated to generate no revenues in any fiscal year greater than three and five-tenths (3.5) times the total amount collected from water permit fees in fiscal year 1992-1993.

(2) Provided, however, effective July 1, 2001, water permit fee revenues may be increased up to three percent (3%) per year; and

(c)(1) Set solid waste permit fees for Class I and Class III landfills calculated to generate revenues in any fiscal year that exceed four and twenty-five hundredths (4.25) times the total amount of permit fees collected from Class I and Class III solid waste landfills in fiscal year 1992-1993.

(2) Provided, that the total fee revenues cannot exceed one and twenty-five hundredths (1.25) times the total amount collected from solid waste permit fees in fiscal year 1994-1995.

(ii) Should the amount of permit fees levied on and received from permits existing prior to June 30, 1995, exceed the amounts specified in subdivision (1)(B)(i) of this section in a fiscal year, the overcollections may be retained by the department to be used to reduce permit fees in subsequent years by relative amounts.

(iii) With the exception of major underground injection control wells, fees for no-discharge state permits will be capped at five hundred dollars (\$500);

(2)(A) The regulations shall provide that the fees shall be assessed on a per-facility basis for the following categories of permits:

(i) Air;

(ii) Water; and

(iii) Solid waste.

(B) All annual fees for air permits issued under the state implementation plan or the regulations promulgated pursuant to the Clean Air Act, 42 U.S.C. § 7401 et seq., shall be assessed in accordance with the Clean Air Act, 42 U.S.C. § 7401 et seq.

(C) The regulations may include a provision for appropriate adjustments in the fees to reflect carryover fee collections in excess of

the administrative costs of issuance, renewal, inspection, modification, and monitoring associated with these permits.

(D) Notwithstanding other provisions of this subchapter and other applicable laws, the commission is authorized to promulgate and the department is authorized to collect annual fees from facilities electing to operate under the terms and conditions of a pollution prevention plan in lieu of an air permit. The annual pollution prevention plan fee shall be equal to the fee otherwise applicable to facilities operating under an air permit;

(3) The department shall collect the permit fees as established by the commission and shall deny the issuance of an initial permit, a renewal permit, or a modification permit if and when any facility subject to control by the department fails or refuses to pay the fees after reasonable notice as established by the regulations promulgated under this chapter;

(4) The department shall require that any fee defined in this chapter shall be paid prior to the issuance of any permit; and

(5) The department is hereby authorized to promulgate such rules and regulations necessary to administer the fees, rates, tolls, or charges for services established by this section and is directed to prescribe and collect such fees, rates, tolls, or charges for the services delivered by the department in such manner as may be necessary to support the programs of the department as directed by the Governor and the General Assembly.

History. Acts 1983, No. 817, § 3; A.S.A. 1947, § 82-1918; Acts 1987, No. 629, § 1; 1991, No. 789, § 1; 1993, No. 163, § 3; 1993, No. 165, § 3; 1993, No. 1254, §§ 1, 5; 1995, No. 509, § 3; 1995, No. 1056, § 1; 1997, No. 310, § 1; 1999, No. 1052, § 1; 1999, No. 1164, § 5.

A.C.R.C. Notes. Sections 8-6-215 — 8-6-217 have been superseded by § 8-1-106.

As amended by Acts 1995, Nos. 509 and 1056, subdivision (1)(B)(i) also provided: "In raising the cap for total fee revenues, fees for solid waste permits shall not increase in fiscal years 1995-96 and 1996-97."

Publisher's Notes. Acts 1983, No. 817, § 4, provided that the initial fee will not be enforced retroactively against water, solid waste, or air pollution control facilities that hold valid permits as of July 4, 1983.

Acts 1991, No. 609, § 1, provided: "It is the public policy of this state that vigorous efforts be made to protect our fragile en-

vironment. Recognizing that duties concerning protection of the environment have been assigned to several agencies of state government, it is found that to enhance efforts to protect the environment, authority for instituting civil suits to protect the environment in the courts of this state and of the United States should be placed in the office of the Attorney General."

Acts 1991, No. 609, § 3, provided: "This Act shall not be construed as superseding or impairing any legal authority currently vested with the Arkansas Department of Pollution Control and Ecology, nor shall this Act in any way affect programs delegated by federal agencies to the Arkansas Department of Pollution Control and Ecology."

Acts 1993, No. 1254, § 5, codified as subdivision (5) of this section, is also codified as §§ 8-1-105(c) and 8-7-226(d).

Cross References. Arkansas Department of Environmental Quality, § 25-14-101.

8-1-104. Existing rules and regulations.

All existing rules and regulations of the Arkansas Department of Environmental Quality not inconsistent with the provisions of this chapter relating to subjects embraced within this chapter shall remain in full force and effect until expressly repealed, amended, or superseded if the rules and regulations do not conflict with the provisions of this chapter.

History. Acts 1983, No. 817, § 6; A.S.A. 1947, § 82-1921.

8-1-105. Arkansas Department of Environmental Quality Fee Trust Fund.

(a) An Arkansas Department of Environmental Quality Fee Trust Fund is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

(b) All interest earnings and fees collected under the provisions of all laws administered by the Arkansas Department of Environmental Quality shall be deposited into this fund unless otherwise provided by law. The department shall use these funds to defray the costs of operating the department.

(c) The department is hereby authorized to promulgate such rules and regulations as are necessary to administer the fees, rates, tolls, or charges for services established by this section and is directed to prescribe and collect such fees, rates, tolls, or charges for the services delivered by the department in such manner as may be necessary to support the programs of the department as directed by the Governor and the General Assembly.

History. Acts 1983, No. 817, § 5; A.S.A. 1947, § 82-1920; Acts 1993, No. 1254, §§ 2, 5; 1999, No. 1164, § 6; 2007, No. 1281, § 36.

Publisher's Notes. Acts 1993, No. 1254, § 5, codified as subsection (c) of this

section, is also codified as §§ 8-1-103(5) and 8-7-226(d).

Cross References. Arkansas Department of Environmental Quality Fee Trust Fund, § 19-5-1137.

8-1-106. Definitions — Disclosure statements — Denial of application — Appeal — Regulations.

(a) As used in this section:

(1) "Affiliated person" means:

(A) Any officer, director, or partner of the applicant;

(B) Any person employed by the applicant in a supervisory capacity over operations of the facility that is the subject of the application that may adversely impact the environment, or with discretionary authority over such operations;

(C) Any person owning or controlling more than five percent (5%) of the applicant's debt or equity; and

(D) Any person who is not now in compliance or has a history of noncompliance with the environmental laws or regulations of this state or any other jurisdiction and who through relationship by affinity or consanguinity or through any other relationship could be reasonably expected to significantly influence the applicant in a manner that could adversely affect the environment;

(2) "Disclosure statement" means a written statement by the applicant that contains:

(A) The full name and business address of the applicant and all affiliated persons;

(B) The full name and business address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%) or that is a parent company or subsidiary of the applicant, and a description of the ongoing organizational relationships as they may impact operations within the state;

(C) A description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to environmental regulation;

(D) A listing and explanation of any civil or criminal legal actions by government agencies involving environmental protection laws or regulations against the applicant and affiliated persons in the ten (10) years immediately preceding the filing of the application, including administrative enforcement actions resulting in the imposition of sanctions, permit or license revocations or denials issued by any state or federal authority, actions that have resulted in a finding or a settlement of a violation, and actions that are pending;

(E) A listing of any federal environmental agency and any other environmental agency outside this state that has or has had regulatory responsibility over the applicant; and

(F) Any other information the Director of the Arkansas Department of Environmental Quality may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons; and

(3) "History of noncompliance" means past operations by an applicant that clearly indicate a disregard for environmental regulation or a demonstrated pattern of prohibited conduct that could reasonably be expected to result in adverse environmental impact if a permit were issued.

(b)(1) Except as provided in subdivisions (b)(2) and (4) of this section, all applicants for the issuance or transfer of any permit, license, certification, or operational authority issued by the Arkansas Department of Environmental Quality shall file a disclosure statement with their applications. Deliberate falsification or omission of relevant information from disclosure statements shall be grounds for civil or criminal enforcement action or administrative denial of a permit, license, certification, or operational authorization.

(2) The following persons or entities are not required to file a disclosure statement pursuant to this section:

(A)(i) Governmental entities, consisting only of subdivisions or agencies of the federal government, agencies of the state government, counties, municipalities, or duly authorized regional solid waste management boards as defined by § 8-6-702.

(ii) This exemption shall not extend to improvement districts or any other subdivision of government that is not specifically instituted by an act of the General Assembly; and

(B) Applicants for a general permit to be issued by the department pursuant to its authority to implement the National Pollutant Discharge Elimination System for storm water discharge or any other person or entity the Arkansas Pollution Control and Ecology Commission may by rule exempt from the submissions of a disclosure statement.

(3) Nothing in this subsection, including the exemptions in subdivision (b)(2) of this section, shall be construed as a limitation upon the authority of the director to deny a permit based upon a history of noncompliance to any applicant or for other just cause.

(4) If the applicant is a publicly held company required to file periodic reports under the Securities Exchange Act of 1934 or a wholly owned subsidiary of a publicly held company, the applicant shall not be required to submit a disclosure statement, but shall submit the most recent annual and quarterly reports required by the United States Securities and Exchange Commission that provide information regarding legal proceedings in which the applicant has been involved. The applicant shall submit such other information as the director may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

(5) For a person or an entity seeking a renewal of an expiring permit, license, certification, or operational authorization, the disclosure requirements of this section shall be met if the person or entity:

(A) Discloses any change in previously submitted information or verifies that the previously submitted information remains accurate; and

(B) Submits the information on forms developed by the department.

(6) The Arkansas Pollution Control and Ecology Commission may adopt regulations exempting certain permits, licenses, certifications, or operational authorizations from the disclosure requirements and establish reasonable and appropriate disclosure information, if any, required for specific types of permits, licenses, certifications, or operational authorizations based on:

(A) The scope of a permit, license, certification, or operational authorization; and

(B) The person or entity that would receive a permit, license, certification, or operational authorization.

(c) The director may deny the issuance or transfer of any permit, license, certification, or operational authority if he or she finds, based upon the disclosure statement and other investigation which he or she deems appropriate, that:

(1) The applicant has a history of noncompliance with the environmental laws or regulations of this state or any other jurisdiction;

(2) An applicant that owns or operates other facilities in the state is not in substantial compliance with, or on a legally enforceable schedule that will result in compliance with, the environmental laws or regulations of this state; or

(3) A person with a history of noncompliance with the environmental laws or regulations of this state or any other jurisdiction is affiliated with the applicant to the extent of being capable of significantly influencing the practices or operations of the applicant that could have an impact upon the environment.

(d) In reaching any decision pursuant to the requirements of this section, the director shall consider:

(1) The potential danger to the environment and public health and safety if the applicant's proposed activity is not conducted in a competent and responsible manner;

(2) The degree to which past and present activities in this state and other jurisdictions directly bear upon the reliability, competence, and responsibility of the applicant; and

(3) Any evidence of rehabilitation following past violations or convictions.

(e) Any person or legal entity aggrieved by a decision of the director under this section may appeal to the Arkansas Pollution Control and Ecology Commission through administrative procedures adopted by the Arkansas Pollution Control and Ecology Commission.

(f) The Arkansas Pollution Control and Ecology Commission shall adopt regulations necessary to implement this section.

History. Acts 1991, No. 454, § 1; 1993, No. 163, § 4; 1993, No. 165, § 4; 1993, No. 1052, § 1; 1995, No. 384, § 1; 1999, No. 1164, § 7; 2007, No. 1005, § 1; 2007, No. 1019, §§ 1, 2; 2009, No. 1199, §§ 1, 2; 2011, No. 222, § 1.

Publisher's Notes. Acts 1991, No. 454, § 2, provided: "The provisions of this act expressly supersede those set out in Act 531 of 1989. This act does not supersede or affect in any way the Arkansas Surface Coal and Mining Act and implementing regulations as it impacts on the import of past or pending violations upon surface coal mining operators."

The reference to the Arkansas Surface

Coal and Mining Act in Acts 1991, No. 454, § 2, may refer to the Arkansas Surface Coal Mining and Reclamation Act of 1979.

Acts 1989, No. 531 was codified at § 8-6-213(a) [repealed] and §§ 8-6-215 — 8-6-217 [superseded].

U.S. Code. The Securities Exchange Act of 1934, referred to in this section, is primarily codified as 15 U.S.C. § 78a et seq.

Cross References. State water pollution control agency and permit program for discharges into navigable waters, § 8-4-208.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

8-1-107. Inspections — Definitions — Investigations — Inspection warrant — Exceptions — Penalties.

(a) **GENERAL.** Whenever it shall be necessary for the purpose of implementing or monitoring the enforcement of any law charged to the authority of the Arkansas Department of Environmental Quality, any authorized employee or agent of the department may enter upon any public or private property for the purpose of obtaining information or conducting investigations or inspections, subject to the following provisions.

(b) **DEFINITIONS.** As used in this section, the following terms shall have these ascribed meanings:

(1) “Administrative inspections” means investigation by department personnel at facilities operating within the department’s apparent regulatory jurisdiction;

(2) “Facility” means the public or private area, premises, curtilage, building, or conveyance described as the subject of administrative inspection;

(3) “Pervasively regulated facility or activity” means the activity or facility that is the location of activity authorized by the department through a permit, license, certification, or operational status approval; and

(4)(A) “Probable cause” means showing that an administrative search limited in scope is necessary to ensure compliance with or enforcement of laws, regulations, or orders charged to the department for implementation.

(B) For the purpose of conducting administrative inspections or applying for administrative warrants, probable cause may be provided to the department through complaints or other means that reasonably justify a limited and controlled administrative inspection.

(c) **ADMINISTRATIVE INSPECTIONS.**

(1)(A) Whenever the department obtains information that supports reasonable cause to believe that a violation of any law within its regulatory authority is being or has been violated, or that unauthorized regulated conduct is occurring or has occurred, department personnel or its agents may demand entry onto any property, public or private, to inspect any facility.

(B) The department’s investigation or inspection shall be limited to that necessary to confirm or deny the cause which prompted the investigation or inspection, and shall be conducted during daylight, during regular business hours, or, under emergency or extraordinary circumstances, at a time necessary to observe the suspected violation or unauthorized conduct.

(C) Except under emergency circumstances, the department shall inform such facility’s owner or agent of all information which forms the basis of its probable cause at the time of the inspection.

(2) Nothing in this subsection shall be construed as requiring the department to forfeit the element of surprise in its inspection efforts.

(3) Also, nothing in this section shall be construed as limiting the frequency of the periodic or random inspections of pervasively regulated facilities or activities.

(4) For the purpose of this section, a rebuttable presumption concerning the jurisdiction of the department's regulatory authority is established as it regards the department's authority to inspect any facility.

(d) ADMINISTRATIVE INSPECTION WARRANTS. If consent to inspect is denied, the department may obtain an administrative inspection warrant from a judicial officer. Issuance and execution of administrative inspection warrants shall be as follows:

(1) Any judicial officer otherwise authorized to issue search warrants within his or her jurisdiction may, upon proper oath or affirmation showing probable cause as defined by this section, issue warrants for the purpose of conducting administrative inspections authorized by any law or regulation administered by the department;

(2) A warrant shall issue only upon an affidavit of a department official, employee, or agent having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he or she shall issue a warrant identifying the facility to be inspected, and the purpose of the inspection. The warrant shall:

(A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(B) Be directed to a department officer or employee;

(C) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified;

(D) Specifically identify any documents or samples to be gathered during the inspection;

(E) Direct that it be served during normal business hours unless emergency or extraordinary circumstances compel otherwise; and

(F) Designate the judge or magistrate to whom it shall be returned;

(3) If appropriate, the warrant may authorize the review and copying of documents which may be relevant to the purpose of the inspection. If documents must be seized for the purpose of copying, the person serving the warrant shall prepare an inventory of documents taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or facility the documents were taken, if present, or in the presence of at least one (1) credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose facility the documents were taken. The seized documents shall be copied as soon as feasible under circumstances preserving their authenticity, then returned to the person from whom the documents were taken;

(4) The warrant may authorize the taking of samples of materials generated, stored, or treated at the facility, or of the water, air, or soils

within the facility's control or that may have been affected by the facility's operations. The person executing the warrant shall prepare an inventory of all samples taken. In any inspection conducted pursuant to an administrative warrant in which such samples are taken, the department shall make split samples available to the person whose facility is being inspected;

(5) A warrant issued pursuant to this section must be executed and returned within ten (10) days of its date unless, upon a showing of a need for additional time, the court orders otherwise. The return of the warrant shall be made promptly, accompanied by a written inventory of any documents or samples taken;

(6) The judge or magistrate who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the circuit court for the judicial district in which the inspection was made;

(7) This subsection does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with duly adopted administrative procedures; and

(8) A copy of the warrant and all supporting affidavits shall be provided to the person served, or left at the entry of the facility inspected.

(e) ADMINISTRATIVE INSPECTION WARRANTS — EXCEPTIONS.

Notwithstanding the previous subsection, an administrative warrant shall not be required for any inspection, including the review and copying of documents and taking of samples, under the following circumstances:

(1) For pervasively regulated facilities or activities as defined by this section whose permit, license, certification, or operational approval from the department provides notice that the department may inspect regulated activities to assure compliance. If the department has reason to believe that a violation of any law has or is occurring, the basis for such belief shall be communicated at the time of the inspection;

(2) If the owner, operator, or agent in charge of the facility consents;

(3) In situations presenting imminent danger to public health and safety or the environment;

(4) In situations involving inspection of conveyances, if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(5) In any other exception or emergency circumstance when time or opportunity to apply for a warrant is lacking;

(6) In situations involving conditions that may be observed in an open field, from an area practically open to public access, or in plain view; or

(7) In all other situations in which a warrant is not constitutionally required.

(f) PENALTIES. Any willful and unjustified refusal of right of entry and inspection to department personnel as set out in this section shall constitute a misdemeanor subject to a fine of up to twenty-five thousand

dollars (\$25,000) or civil penalties up to twenty-five thousand dollars (\$25,000).

History. Acts 1991, No. 1076, § 2.

Publisher's Notes. Acts 1991, No. 1076, § 1, provided: "The General Assembly hereby determines and declares that protection of the environment is of paramount governmental interest in the State of Arkansas, and that standards which will permit administrative inspections consonant with the United States and Arkansas Constitutions must be estab-

lished which clarify the ADPC&E's inspection authority, and provide for the issuance of administrative inspection warrants when circumstances require. Therefore, the purpose of this act is to clarify and supplement the inspection authority vested with the department. This act shall be given a liberal interpretation so as to implement its remedial intent."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

SUBCHAPTER 2 — POWERS OF THE DEPARTMENT AND COMMISSION

SECTION.

- 8-1-201. Legislative intent.
- 8-1-202. Powers of the Director of the Arkansas Department of Environmental Quality.
- 8-1-203. Powers and responsibilities of the Arkansas Pollution Control and Ecology Commission.

SECTION.

- 8-1-204. Administrative law judge.
- 8-1-205. [Repealed.]
- 8-1-206. Voluntary environmental stewardship program — Definitions.

A.C.R.C. Notes. Acts 1997, No. 1219, § 1, provided: "Legislative intent. With Act 1230 of 1991, the General Assembly sought to delineate the respective responsibilities of the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Pollution Control & Ecology. Confusion on these issues in the public's perception continues, however, primarily because of the similarity in the names of these entities. The purpose of this Act is to achieve the legislative intent of Act 1230 of 1991 and to definitively assign the executive, adjudicatory, and rulemaking roles for the State's regulatory functions concerning protection of the environment."

Acts 1997, No. 1219, § 2, provided: "Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality'."(a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology'

or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

Publisher's Notes. Acts 1991, No. 1230, § 4, provided: "The provisions of this act shall be in addition and supple-

mental to all other laws of Arkansas and rules, regulations or policies adopted by the Arkansas Commission on Pollution Control and Ecology now in effect and shall repeal only such laws or parts of laws as may be specifically in conflict with this act.”

Effective Dates. Acts 1993, No. 1264, § 6: Apr. 20, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that consideration of economic impact and environmental benefit should be immediately implemented by the Commission and this act being necessary for the immediate preservation of the environment and the welfare of the state shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 1191, § 44: July 1, 1995. Emergency clause provided: “It is hereby

found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995.”

8-1-201. Legislative intent.

(a) The General Assembly recognizes that since 1949, when the precursor of the Arkansas Pollution Control and Ecology Commission was first created, significant changes have occurred in the responsibilities charged to the state’s environmental agency. This subchapter intends to clarify and supersede prior law that does not comport with this delineation of responsibility between the Arkansas Department of Environmental Quality and the commission.

(b) Further, in delineating the responsibility between the department and the commission, it is the intent of the General Assembly neither to expand nor to diminish any rights of property owners of this state under Arkansas Constitution, Article 2, § 22.

History. Acts 1991, No. 1230, § 1; 1993, No. 163, § 5; 1993, No. 165, § 5; 1997, No. 1219, § 4.

8-1-202. Powers of the Director of the Arkansas Department of Environmental Quality.

(a) The executive head of the Arkansas Department of Environmental Quality shall be the Director of the Arkansas Department of Environmental Quality, who shall be appointed by the Governor with the consent of the Senate. The director shall serve at the pleasure of the Governor.

(b)(1) The director shall be the executive officer and active administrator of all pollution control activities in the state.

(2) As such, the director’s duties shall include:

(A)(i) The administration of permitting, licensing, certification, and grants programs deemed necessary to protect the environmental integrity of the state.

(ii) The director, or his or her delegatee within his or her staff, shall serve as the issuing authority for the state;

(B)(i) Initiation and settlement of civil or administrative enforcement actions to compel compliance with laws, orders, and regulations charged to the responsibility of the department.

(ii) In this regard, the director may propose the assessment of civil penalties as provided by law and take all actions necessary to collect such penalties;

(C) Issuance of orders in such circumstances that reasonably require emergency measures to be taken to protect the environment or the public health and safety, except to the extent that the matter involved is reserved to the jurisdiction or orders of the Arkansas Pollution Control and Ecology Commission for rulemaking procedures in § 8-4-202;

(D) Day-to-day administration of all activities that the department is empowered by law to perform, including, but not limited to, the employment and supervision of such technical, legal, and administrative staff, within approved appropriations, as is necessary to carry out the responsibilities vested with the department;

(E) Providing technical and legal expertise and assistance in the field of environmental protection to other agencies and subdivisions of the state as appropriate;

(F) Day-to-day administration of environmental programs delegated to the State of Arkansas by the responsible agencies of the United States Government;

(G) The supervision of the Arkansas Energy Office of the Arkansas Department of Environmental Quality under the Arkansas Energy Reorganization and Policy Act of 1981, § 15-10-201 et seq.; and

(H) Any other power or duty specifically vested with the director or department by the General Assembly.

History. Acts 1991, No. 1230, § 1; 1993, No. 163, § 6; 1993, No. 165, § 6; 1999, No. 1164, § 8; 2017, No. 271, § 2.

Amendments. The 2017 amendment substituted “United States Government” for “federal government” in (b)(2)(F); in-

serted present (b)(2)(G); and redesignated former (b)(2)(G) as (b)(2)(H).

Cross References. Arkansas Department of Environmental Quality, § 25-14-101.

8-1-203. Powers and responsibilities of the Arkansas Pollution Control and Ecology Commission.

(a) The Arkansas Pollution Control and Ecology Commission shall meet regularly in publicly noticed open meetings to discuss and rule upon matters of environmental concern.

(b) The commission’s powers and duties shall be as follows:

(1)(A) Promulgation of rules and regulations implementing the substantive statutes charged to the Arkansas Department of Environmental Quality for administration.

(B) In promulgation of such rules and regulations, prior to the submittal to public comment and review of any rule, regulation, or change to any rule or regulation that is more stringent than the federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule or regulation on the people of the State of Arkansas, including those entities that will be subject to the regulation.

(C) The commission shall promptly initiate rulemaking proceedings to further implement the analysis required under subdivision (b)(1)(B) of this section.

(D) The extent of the analysis required under subdivision (b)(1)(B) of this section shall be defined in the commission's rulemaking required under subdivision (b)(1)(C) of this section. It will include a written report which shall be available for public review along with the proposed rule in the public comment period.

(E) Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent regulation;

(2) Promulgation of rules, regulations, and procedures not otherwise governed by applicable law that the commission deems necessary to secure public participation in environmental decision-making processes;

(3) Promulgation of rules and regulations governing administrative procedures for challenging or contesting department actions;

(4) In the case of permitting or grants decisions, providing the right to appeal a permitting or grants decision rendered by the Director of the Arkansas Department of Environmental Quality or his or her delegatee;

(5) In the case of an administrative enforcement or emergency action, providing the right to contest any such action initiated by the director;

(6) Instruct the director to prepare such reports or perform such studies as will advance the cause of environmental protection in the state;

(7) Make recommendations to the director regarding overall policy and administration of the department. However, the director shall always remain within the plenary authority of the Governor; and

(8) Upon a majority vote, initiate review of any director's decision.

(c)(1)(A) In providing for adjudicatory review as contemplated by subdivisions (b)(4) and (5) of this section, the commission may appoint one (1) or more administrative law judges.

(B) An administrative law judge shall at all times serve as an agent of the commission.

(2) In hearings upon appeals of permitting or grants decisions by the director or contested administrative enforcement or emergency actions

initiated by the director, the administrative law judge shall administer the hearing in accordance with procedures adopted by the commission and, after due deliberation, submit his or her recommended decision to the commission.

(3)(A)(i) Commission review of any appealed or contested matter shall be upon the record compiled by the administrative law judge and his or her recommended decision.

(ii) Commission review shall be de novo. However, no additional evidence need be received unless the commission so decides in accordance with established administrative procedures.

(B) The commission may afford the opportunity for oral argument to all parties of the adjudicatory hearing.

(C)(i) By the majority vote of a quorum, the commission may affirm, reverse and dismiss, or reverse and remand to the director.

(ii) If the commission votes to affirm or reverse, such decision shall constitute final agency action for purposes of appeal.

(4) Any party aggrieved by the commission decision may appeal as provided by applicable law.

(d) The Chair of the Arkansas Pollution Control and Ecology Commission may appoint one (1) or more committees composed of commission members to act in an advisory capacity to the full commission.

History. Acts 1991, No. 1230, § 1; 1993, No. 163, § 7; 1993, No. 165, § 7; 1993, No. 1264, § 2; 1995, No. 117, § 1; 2015, No. 838, §§ 1, 2.

Publisher's Notes. Acts 1993, No. 1264, § 1, provided: "The General Assembly desires to provide protection of the human health and the environment for the citizens of the state. In providing for such protection, the General Assembly recognizes that environmental rules and regulations should have a sound scientific and economic basis. Thus, the General Assembly finds that, prior to the promulgation of any environmental rule or regu-

lation by the state that is more stringent than federal requirements, the state must consider the economic impact and environmental benefit such rule or regulation will have on the citizens of the state of Arkansas prior to such promulgation."

Amendments. The 2015 amendment inserted designations (c)(1)(A) and (c)(1)(B); substituted "law judges" for "hearing officers" in (c)(1)(A); in (c)(1)(B), substituted "An administrative law judge" for "The administrative hearing officers" and "an agent" for "agents"; and substituted "law judge" for "hearing officer" in (c)(2) and (c)(3)(A)(i).

CASE NOTES

Administrative Law Judge.

In a case concerning a permit to operate a steel mill, there was no violation of this section because an administrative hearing officer acting on behalf of the Arkansas Pollution Control & Ecology Commission met the requirements of the law. The

hearing officer duly received testimonial and documentary evidence and carried out a de novo review based on that proof. *Nucor Steel-Arkansas v. Ark. Pollution Control & Ecology Comm'n*, 2015 Ark. App. 703, 478 S.W.3d 232 (2015).

8-1-204. Administrative law judge.

(a) The Arkansas Pollution Control and Ecology Commission shall employ a full-time administrative law judge to perform functions and duties that the commission shall direct and, in particular, to advise the

commission on matters of law and procedure that may arise during the conduct of commission duties and responsibilities as outlined in §§ 8-1-203, 8-4-201, 8-4-202, 8-4-311, 8-5-205, and 8-6-207, or as otherwise provided by law.

(b) The administrative law judge shall be selected and hired by the commission and shall be independent of and not an employee of the Arkansas Department of Environmental Quality.

(c) The expenses of the administrative law judge shall be paid from the Arkansas Department of Environmental Quality Fee Trust Fund or from other sources as provided by law.

(d) The office space for the administrative law judge shall be at a location other than the offices of the department.

(e) An administrative assistant II shall be supervised by and provide assistance to the administrative law judge authorized in this section.

(f) The disbursing officer of the department shall disburse the funds appropriated for the commission's administrative law judge.

History. Acts 1995, No. 1191, § 36; 1999, No. 1164, § 9; 2003, No. 51, § 1; 2015, No. 838, § 3.

Amendments. The 2015 amendment substituted "law judge" for "hearing officer" in the section heading and through-

out the section; and substituted "administrative law judge" for "hearing officer" in (d) and (f).

Cross References. Arkansas Department of Environmental Quality Fee Trust Fund, §§ 8-1-105 and 19-5-1137.

8-1-205. [Repealed.]

Publisher's Notes. This section, concerning the Mercury Task Force recommendations and implementation was re-

pealed by Acts 2013, No. 1153, § 1. The section was derived from Acts 1995, No. 1191, § 35; 1999, No. 1164, § 10.

8-1-206. Voluntary environmental stewardship program — Definitions.

(a) As used in this section:

(1) "Environmental laws" means this title and any regulations, permits, and orders adopted or issued under this title;

(2) "Environmental management system" means a set of documented processes and practices that enable an organization to reduce its environmental impact and increase operating efficiency by continuously improving its environmental performance;

(3) "Environmental performance" means the effect of a facility or activity on air, water, land, natural resources, or human health and the generation of waste by a facility or activity; and

(4)(A)(i) "Organization" means a company, corporation, political subdivision, firm, enterprise, or institution, or any part or combination, whether incorporated or not, public or private, that has its own functions and administration.

(ii) For an organization with more than one (1) operating unit, a single operating unit may be treated as an organization.

(B) “Organization” includes persons or entities regulated by the Arkansas Department of Environmental Quality and those not regulated by the department.

(b)(1) The Director of the Arkansas Department of Environmental Quality may develop, implement, and administer a voluntary environmental stewardship program.

(2) The voluntary environmental stewardship program shall provide recognition for those organizations that have a history of sustained compliance with environmental law requirements or organizations that go above and beyond environmental law requirements.

(3) At the discretion of the director, the voluntary environmental stewardship program shall provide incentives for organizations that demonstrate sustained compliance with environmental laws or go above and beyond environmental law requirements to include without limitation:

(A) Reduced inspection frequency;

(B) Reduced reporting requirements; or

(C) Advanced notification of inspections and enforcement rulings.

(4) The voluntary environmental stewardship program shall include tiers commensurate with and appropriate to the environmental impacts of an organization’s facilities, activities, products, or services, and be based on an organization’s level of commitment to the voluntary environmental stewardship program.

(c)(1) Participation in the voluntary environmental stewardship program by any organization is voluntary.

(2) The department shall approve an organization’s membership in the voluntary environmental stewardship program and shall review the organization’s membership at least one (1) time every three (3) years.

(3) Membership and tier level assignment shall be based on the organization’s commitment to:

(A) Sustained compliance with environmental laws and history of compliance with environmental laws;

(B) Develop, implement, and maintain an environmental management system;

(C) Going above and beyond the requirements of environmental laws;

(D) Pollution prevention and improving its environmental performance; and

(E) Reporting to the department on its environmental performance annually.

(d)(1) Membership in the voluntary environmental stewardship program is not a license or permit under this title.

(2) The denial or approval of membership is not an appealable action or an action against the organization under this title.

(e) This section does not permit the violation of state or federal laws.

SUBCHAPTER 3 — ENVIRONMENTAL AUDIT REPORTS

SECTION.

- 8-1-301. Purpose.
- 8-1-302. Definitions.
- 8-1-303. Privilege.
- 8-1-304. Waiver.
- 8-1-305. Exceptions.
- 8-1-306. Stipulation.
- 8-1-307. Disclosure in civil or administrative proceeding.

SECTION.

- 8-1-308. [Repealed.]
- 8-1-309. Audit privilege reserved for administrative or civil proceedings.
- 8-1-310. Burden of proof.
- 8-1-311. Partial disclosure.
- 8-1-312. Scope.

Effective Dates. Acts 1999, No. 871, § 11: Mar. 25, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that immediate implementation of these statutes is necessary in order to ensure that the state meets immediate Environmental Protection Agency requirements for authorization and delegation of federal programs to the State of Arkansas. Therefore, an emergency is declared to exist and this act being immedi-

ately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

8-1-301. Purpose.

The General Assembly hereby finds and declares that protection of the environment is enhanced by the public's voluntary compliance with environmental laws and that the public will benefit from incentives to identify and remedy environmental compliance issues. It is further declared that limited expansion of the protection against disclosure will encourage such voluntary compliance and improve environmental quality and that the voluntary provisions of this subchapter will not inhibit the exercise of the regulatory authority by those entrusted with protecting our environment.

History. Acts 1995, No. 350, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Jones, Wright, Jr., & Ternes, Environmental Compliance Audits: The Arkansas Experience, 21 U. Ark. Little Rock L. Rev. 191.

8-1-302. Definitions.

As used in this subchapter:

- (1) "Commission" means the Arkansas Pollution Control and Ecology Commission;
- (2) "Director" means the Director of the Arkansas Department of Environmental Quality;

(3)(A) “Environmental audit” means a voluntary, internal, and comprehensive evaluation of one (1) or more facilities or an activity at one (1) or more facilities regulated under this chapter, or federal, regional, or local counterparts or extensions thereof, or of management systems related to that facility or activity, that is designed to identify and prevent noncompliance and to improve compliance with statutory or regulatory requirements.

(B) An environmental audit may be conducted by the owner or operator, by the owner’s or operator’s employees, or by independent contractors; and

(4) “Environmental audit report” means a set of documents prepared as a result of an environmental audit, and labeled “ENVIRONMENTAL AUDIT REPORT: PRIVILEGED DOCUMENT”, that may include:

(A) Field notes, records of observations, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically recorded information, maps, charts, graphs, and surveys collected or developed for the primary purpose of preparing an environmental audit;

(B) An audit report prepared by the auditor that includes:

- (i) The scope of the audit;
- (ii) The information gained in the audit;
- (iii) Conclusions and recommendations; and
- (iv) Exhibits and appendices;

(C) Memoranda and documents analyzing a portion of or all of the audit report and discussing implementation issues; and

(D) An implementation plan that addresses correcting past compliance, improving current compliance, and preventing future non-compliance.

History. Acts 1995, No. 350, § 1; 1999, No. 1164, § 11.

8-1-303. Privilege.

(a) In order to encourage owners and operators of facilities and persons conducting other activities regulated under this chapter or its federal counterparts or extensions, both to conduct voluntary internal environmental audits of their compliance programs and management systems and to assess and improve compliance with statutory and regulatory requirements, an environmental audit privilege is created to protect the confidentiality of communications relating to voluntary internal environmental audits.

(b) An environmental audit report shall be privileged and shall not be admissible as evidence in any civil or administrative legal action, including enforcement actions.

History. Acts 1995, No. 350, § 1; 1999, No. 871, § 1.

8-1-304. Waiver.

(a) The privilege described in § 8-1-303 does not apply to the extent that:

(1) It is waived expressly by the owner or operator of the facility that prepared or caused to be prepared the environmental audit report;

(2) The owner or operator of a facility or person conducting an activity seeks to introduce an environmental audit report as evidence; and

(3) The owner or operator of a facility authorizes the disclosure of the environmental audit report to any party, except when:

(A) Disclosure is made under the terms of a confidentiality agreement between the owner or operator of a facility and:

(i) A potential purchaser of the facility; or

(ii) A customer, lending institution, or insurance company with an existing or proposed relationship with the facility;

(B) Disclosure is made under the terms of a confidentiality agreement between government officials and the owner or operator of a facility; or

(C) Disclosure is made to an independent contractor retained by the owner or operator of the facility for the purpose of identifying noncompliance with statutory or regulatory requirements and assisting the owner or operator in achieving compliance with reasonable diligence.

(b) The waiver of the privilege described in § 8-1-303 may be for part or all of the environmental audit report, and the waiver of privilege extends only to that part of the environmental audit report expressly waived by the owner or operator of a facility.

History. Acts 1995, No. 350, § 1.

8-1-305. Exceptions.

The privilege described in § 8-1-303 does not apply to the following:

(1) Documents, communications, data, reports, or other information that must be collected, developed, maintained, reported, or otherwise made available to the public or a regulatory agency under:

(A) Federal or state law or extensions thereof;

(B) A rule or standard adopted by the Arkansas Pollution Control and Ecology Commission;

(C) A determination, a permit, or an order made or issued by the commission or the Director of the Arkansas Department of Environmental Quality; or

(D) Any other federal, state, or local law, permit, or order;

(2) Information obtained by observation, sampling, or monitoring by any regulatory agency; and

(3) Information obtained from a source independent of the environmental audit.

History. Acts 1995, No. 350, § 1; 1999, No. 871, § 2.

8-1-306. Stipulation.

The parties to a legal action may at any time stipulate to the entry of an order that directs that specific information contained in an environmental audit report is or is not subject to the privilege provided under § 8-1-303.

History. Acts 1995, No. 350, § 1.

8-1-307. Disclosure in civil or administrative proceeding.

(a) In a civil or administrative proceeding, a court of record or administrative tribunal, after an in-camera review, shall require disclosure of material for which the privilege described in § 8-1-303 is asserted if the court or administrative tribunal determines one (1) of the following:

- (1) The privilege is asserted for a fraudulent purpose;
- (2) The material is not subject to the privilege;
- (3) The material is subject to the privilege and the material shows evidence of noncompliance with:

(A) Federal or state law or extensions of such statutes;

(B) Any rule or regulation adopted by the Arkansas Pollution Control and Ecology Commission; or

(C) A determination, permit, or order issued by the commission or the Director of the Arkansas Department of Environmental Quality; and

- (4) The person claiming the privilege did not promptly initiate and pursue appropriate efforts to achieve compliance with reasonable diligence.

(b)(1) If the noncompliance described in subdivision (a)(3) of this section constitutes a failure to obtain a required permit, the person is deemed to have made appropriate efforts to achieve compliance if the person filed an application for the required permit not later than ninety (90) days after the date the person became aware of the noncompliance.

(2)(A) In the event additional time is required to prepare a permit application, the person shall, within ninety (90) days, submit a schedule to the Arkansas Department of Environmental Quality that identifies the activities required to complete the application, and, if the schedule is acceptable to the department, the filing of the application pursuant to the submitted schedule shall constitute reasonable diligence to achieve compliance for a failure to obtain a required permit.

(B) Nothing in this section authorizes a facility to operate without the proper permit having been issued.

History. Acts 1995, No. 350, § 1; 1999, No. 871, § 3; 1999, No. 1164, § 12.

8-1-308. [Repealed.]

A.C.R.C. Notes. Pursuant to §§ 1-2-207 and 1-2-303, the repeal of this section by Acts 1999, No. 871, § 4 is deemed to supersede its amendment by Acts 1999, No. 1164, § 13.

Publisher's Notes. This section, concerning disclosure in a criminal proceeding, was repealed by Acts 1999, No. 871, § 4. The section was derived from Acts 1995, No. 350, § 1; 1999, No. 1164, § 13.

8-1-309. Audit privilege reserved for administrative or civil proceedings.

The privilege created by § 8-1-303 does not apply to criminal investigations or proceedings. When an environmental audit report is obtained, reviewed, or used in a criminal proceeding, the privilege created by § 8-1-303 applicable to administrative or civil proceedings is not waived or eliminated.

History. Acts 1995, No. 350, § 1; 1999, No. 871, § 5.

8-1-310. Burden of proof.

(a) A party asserting the environmental audit privilege under § 8-1-303 has the burden of proving the privilege, including if there is evidence of noncompliance with federal or state law or extensions thereof, and proof that appropriate efforts to achieve compliance were promptly initiated and pursued with reasonable diligence.

(b) A party seeking disclosure under § 8-1-307 has the burden of proving the privilege is asserted for a fraudulent purpose.

History. Acts 1995, No. 350, § 1; 1999, No. 871, § 6.

8-1-311. Partial disclosure.

Upon making a determination under § 8-1-307, the court of record or administrative tribunal may compel disclosure of only those parts of an environmental audit report that are relevant to issues in dispute in the proceeding.

History. Acts 1995, No. 350, § 1; 1999, No. 871, § 7.

8-1-312. Scope.

Nothing in this subchapter may limit, waive, or abrogate:

(1) The scope of any statutory or common law privilege, including the work product doctrine and the attorney-client privilege; or

(2) The rights of the public as provided in the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 1995, No. 350, § 1; 2009, No. 1199, § 3.

CHAPTER 2
ENVIRONMENTAL TESTING

SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]
- 2. ENVIRONMENTAL LABORATORY ACCREDITATION PROGRAM ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS
[Reserved.]

SUBCHAPTER 2 — ENVIRONMENTAL LABORATORY ACCREDITATION PROGRAM
ACT

SECTION.

- 8-2-201. Title.
- 8-2-202. Purpose.
- 8-2-203. Definitions.
- 8-2-204. Powers and duties of department and commission.
- 8-2-205. Procedure for issuance of rules or regulations, appeals, hearings, etc.

SECTION.

- 8-2-206. Accreditation — Criteria and procedure.
- 8-2-207. Accreditation — Duration — Renewal.
- 8-2-208. Accreditation — Revocation.
- 8-2-209. Fees.

8-2-201. Title.

This subchapter may be called the “Environmental Laboratory Accreditation Program Act”.

History. Acts 1985, No. 876, § 1; A.S.A. 1947, § 82-1993; Acts 2017, No. 244, § 1.
Amendments. The 2017 amendment substituted “Environmental Laboratory

Accreditation Program Act” for “State Environmental Laboratory Certification Program Act”.

8-2-202. Purpose.

This subchapter authorizes the Arkansas Department of Environmental Quality to establish and administer an environmental laboratory accreditation program so that laboratories that submit data and analyses to the department may be accredited by the department as having demonstrated acceptable compliance with laboratory standards so that the validity of scientific data submitted to the department may be further assured.

History. Acts 1985, No. 876, § 2; A.S.A. 1947, § 82-1993.1; Acts 1993, No. 322, § 1; 1993, No. 440, § 1; 1999, No. 1164, § 14; 2017, No. 244, § 1.
Amendments. The 2017 amendment

substituted “This subchapter authorizes” for “It is the purpose of this subchapter to authorize”, “accreditation” for “certification”, and “accredited by” for “certified by”.

8-2-203. Definitions.

As used in this subchapter:

(1) “Acceptable results” means results within limits determined on the basis of statistical procedures as prescribed by the Arkansas Department of Environmental Quality;

(2) “Accreditation” means the process by which the department recognizes a laboratory as meeting certain predetermined qualifications or standards, thereby accrediting the laboratory;

(3) “Analyte” means the characteristics of a laboratory sample determined by an analytical laboratory testing procedure;

(4) “Certificate” means a document issued by the department showing the analytes for which a laboratory has received accreditation;

(5)(A) “Consulting laboratory” means a laboratory that performs analyses for any person other than itself.

(B) “Consulting laboratory” does not include a laboratory that is wholly owned by the person for whom the analyses are performed;

(6) “Evaluation” means a review of the quality control and quality assurance procedures, recordkeeping, reporting procedures, methodology, and analytical techniques of a laboratory for measuring or establishing specific analytes;

(7)(A) “Laboratory” means any facility that performs analyses to determine the chemical, physical, or biological properties of air, water, solid waste, hazardous waste, wastewater, or soil or subsoil materials or that performs any other analyses related to environmental quality evaluations required by the department or which will be submitted to the department.

(B) “Laboratory” does not include evaluations to determine the engineering properties related to soil mechanics;

(8)(A) “Matrix” means the components of a sample other than the one (1) or more analyte of interest.

(B) “Matrix” includes without limitation nonpotable water, soil, or oil;

(9) “Method” means procedures and techniques for performing an activity systematically presented in the order in which the procedures and techniques are to be executed;

(10) “Person” means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, venture, municipal, state, or federal government or agency, or any other legal entity, however organized; and

(11) “Proficiency test sample” means a sample of composition that is unknown to the laboratory and is provided to test whether the laboratory can produce analytical results within the specified acceptance criteria.

History. Acts 1985, No. 876, § 3; A.S.A. 1947, § 82-1993.2; Acts 1993, No. 322, § 2; 1993, No. 440, § 2; 1999, No. 1164, § 15; 2017, No. 244, § 1.

Amendments. The 2017 amendment rewrote the section.

8-2-204. Powers and duties of department and commission.

(a) The Arkansas Department of Environmental Quality shall have the following powers and duties under this subchapter:

(1) To establish and administer the Environmental Laboratory Accreditation Program for laboratories applying for accreditation by the department;

(2) To enforce the provisions of this subchapter and all laws, rules, and regulations relating to the program and to environmental testing;

(3) To issue, deny, revoke, or suspend the accreditation of a laboratory for cause; and

(4) To refuse to accept analytical results from a laboratory when the department reasonably determines that the results do not meet reasonable criteria for validation, regardless of whether the laboratory is accredited.

(b) The Arkansas Pollution Control and Ecology Commission shall have the following powers and duties under this subchapter:

(1) To establish by regulation reasonable fees for the accreditation procedures under this subchapter and to cover the expenses of administering the program; and

(2) To promulgate necessary regulations to effect the purpose and administration of the program, including without limitation, provisions governing accreditation, modification, and renewal of accreditation and reaccreditation after revocation.

History. Acts 1985, No. 876, § 4; A.S.A. 1947, § 82-1993.3; Acts 1993, No. 322, § 3; 1993, No. 440, § 3; 2017, No. 244, § 1.

Amendments. The 2017 amendment substituted “accreditation” for “certification” and “accredited” for “certified” throughout; in (a)(1), deleted “State” pre-

ceding “Environmental”; substituted “under” for “set forth in” in (b)(1); and, in (b)(2), deleted “as may be” preceding “necessary”, substituted “without limitation, provisions governing” for “but not limited to provisions governing applications for”, substituted “reaccreditation” for “recertification”; and made stylistic changes.

8-2-205. Procedure for issuance of rules or regulations, appeals, hearings, etc.

(a) Any person that violates any provision of this subchapter or of any rule, regulation, or order issued pursuant to this subchapter or that commits an unlawful act under this subchapter shall be subject to the same penalty and enforcement provisions as are contained in the Arkansas Water Air Pollution Control Act, § 8-4-101 et seq.

(b) Except as otherwise provided in this subchapter, the procedure of the Arkansas Pollution Control and Ecology Commission for issuance of any rules and regulations, conduct of hearings, notice, review of actions on certificates, right of appeal, presumptions, finality of actions, and related matters shall be as provided in Part I of the Arkansas Water and Air Pollution Control Act, §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, including without limitation, §§ 8-4-202, 8-4-205 — 8-4-210, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229.

History. Acts 1985, No. 876, § 8; A.S.A. 1947, § 82-1993.7; Acts 1993, No. 322, § 4; 1993, No. 440, § 4.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by identical Acts 1993, Nos. 322 and 440. This section was also amended by identical Acts 1993, Nos. 163 and 165, § 8, to read as follows: “(a) The procedure of the Arkansas Pollution Control and Ecology Commission for issuance of any rules and regulations, conduct of hearings, notice, review of actions on certificates, right of appeal, presumptions, finality of actions, and related matters shall be as provided in Part I of the Arkansas

Water and Air Pollution Control Act, as amended, §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, including, without limitation, §§ 8-4-202, 8-4-210, 8-4-212 — 8-4-214, 8-4-218 — 8-4-229.

“(b) Any permittee or person subject to regulation may petition the commission for a declaratory order as to the applicability of any rule, statute, permit, or order enforced by the department or the commission. Such petitions shall be processed in the same manner as appeals under the procedures prescribed by §§ 8-4-205, 8-4-212, and 8-4-218 — 8-4-229. These declaratory orders shall have the same status as an order of the commission.”

8-2-206. Accreditation — Criteria and procedure.

(a)(1)(A)(i) All consulting laboratories performing analyses for which results are to be submitted to the Arkansas Department of Environmental Quality shall obtain a laboratory accreditation under this subchapter.

(ii) An analyte, method, or matrix for which the Environmental Laboratory Accreditation Program does not provide accreditation shall be evaluated by the department for acceptance.

(B) The department, in its sole discretion, may refuse to accept results of analyses performed by a consulting laboratory that does not hold a laboratory accreditation under the program for the reason that the laboratory is not accredited.

(2) Accreditation for laboratories other than consulting laboratories shall not be mandatory.

(b) Applications for accreditation shall be made in the form and manner established by the department.

(c) Upon receipt of an application for accreditation, the department shall evaluate and act upon the application in accordance with the following procedures and criteria:

(1)(A) The laboratory must successfully complete an evaluation.

(B) The department shall establish evaluation criteria on proper analytical techniques, quality assurance, recordkeeping, and reporting methods and procedures and facilities, equipment, and personnel requirements; and

(2) The laboratory must submit to the department acceptable results from its analysis of proficiency test samples for the specific analytes, methods, and matrices selected for accreditation.

(d) Upon completion of the laboratory evaluation and the review of the proficiency test sample results, the department shall notify the laboratory of its determination to award or deny accreditation.

(e)(1) If the adequacy of the laboratory's capability and its record-keeping have been sufficiently established to the satisfaction of the department, a certificate will be issued to the laboratory for the evaluated categories of analytes, methods, and matrices.

(2) If accreditation is denied, the department shall set forth, in writing, the reasons for denial.

History. Acts 1985, No. 876, § 5; A.S.A. 1947, § 82-1993.4; Acts 1993, No. 322, § 5; 1993, No. 440, § 5; 2017, No. 244, § 2.

Amendments. The 2017 amendment substituted “Accreditation” for “Certification” in the section heading, (a)(2), and (b) through (e); redesignated former (a)(1)(A) as present (a)(1)(A)(i) and substituted “accreditation” for “certification”; added (a)(1)(A)(ii); in (a)(1)(B), substituted “a laboratory accreditation under the program” for “a certification pursuant to the

program” and “accredited” for “certified”; inserted “techniques” in (c)(1)(B); deleted (c)(2)(B) and (c)(2)(C) and redesignated former (c)(2)(A) as (c)(2); in (c)(2), substituted “proficiency test” for “performance audit” and “analytes, methods, and matrices” for “parameters”; substituted “proficiency test” for “audit” in (d); and, in (e)(1), substituted “recordkeeping” for “adequacy” and “analytes, methods, and matrices” for “parameters”; and made stylistic changes.

8-2-207. Accreditation — Duration — Renewal.

(a) A certificate of accreditation shall be effective for a period of one (1) year from the date of issuance, after which time the accreditation will lapse.

(b) Accreditation may be renewed for additional periods of one (1) year’s duration upon application for renewal made to the Arkansas Department of Environmental Quality.

History. Acts 1985, No. 876, § 5; A.S.A. 1947, § 82-1993.4; Acts 2017, No. 244, § 2.

Amendments. The 2017 amendment substituted “Accreditation” for “Certifica-

tion” in the section heading; in (a), inserted “of accreditation” and substituted “accreditation” for “certificate”; and substituted “Accreditation” for “Certification” in (b).

8-2-208. Accreditation — Revocation.

(a) After a laboratory is accredited, the laboratory’s accreditation may be revoked or suspended by the Arkansas Department of Environmental Quality for:

(1) Knowingly falsifying any data submitted to the department or any data related to laboratory analysis;

(2) Knowingly making any false statement, representation, or certification in any application, record, report, plan, or other document issued by or sent to the department or related to laboratory analysis;

(3) Knowingly misrepresenting procedures or documentation used in sampling or laboratory analysis;

(4) Failing to comply with any one (1) or more of the following requirements under which the accreditation was issued:

(A) Methods or procedures pertaining to analytical techniques, quality assurance, recordkeeping, or reporting methods; or

(B) Facility, equipment, or personnel requirements; or

(5) Failing to achieve acceptable results for specific analytes, methods, or matrices for which it has been accredited.

(b) It shall be unlawful for any person:

- (1) To knowingly falsify any data submitted to the department or any data related to laboratory analysis;
- (2) To knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document issued by or sent to the department or related to laboratory analysis;
- (3) To knowingly misrepresent sampling procedures or methods used in laboratory analysis;
- (4) To knowingly render inaccurate any accreditation issued under this subchapter; or
- (5) To knowingly represent that a person is accredited when that person is not accredited.

History. Acts 1985, No. 876, § 6; A.S.A. 1947, § 82-1993.5; Acts 1993, No. 322, § 6; 1993, No. 440, § 6; 2017, No. 244, § 2.

Amendments. The 2017 amendment substituted “Accreditation” for “Certification” in the section heading; in the introductory language of (a), substituted “After a laboratory is accredited, the laboratory’s accreditation” for “Once certified a labora-

tory’s certification” and added “for”; substituted “Knowingly falsifying” for “For knowing falsification of” in (a)(1); substituted “Knowingly” for “For knowingly” in (a)(2); substituted “Knowingly misrepresenting” for “For knowing misrepresentation of” in (a)(3); rewrote (a)(4) and (a)(5); substituted “accreditation” for “certification” in (b)(4); and rewrote (b)(5).

8-2-209. Fees.

(a)(1) The Arkansas Department of Environmental Quality may assess and collect reasonable fees from participating laboratories for the administrative costs of the Environmental Laboratory Accreditation Program.

(2) The costs shall include without limitation, the expense of conducting evaluations.

(b) Fees may be assessed at the time of initial application, renewal application, application for modification, or at the time a certificate is awarded.

(c) Following a public hearing and based upon a record calculating the reasonable administrative costs of conducting accreditation procedures under this subchapter and costs of enforcing the terms and conditions of accreditations, the Arkansas Pollution Control and Ecology Commission may establish reasonable fees for initial issuance, annual review, and modification of accreditations authorized by this subchapter.

History. Acts 1985, No. 876, § 7; A.S.A. 1947, § 82-1993.6; Acts 1993, No. 322, § 7; 1993, No. 440, § 7; 2017, No. 244, § 2.

Amendments. The 2017 amendment substituted “Accreditation” for “Certification” in (a)(1) and made similar changes throughout (c); in (a)(1), substituted “may

assess and collect reasonable fees from” for “shall be authorized to assess reasonable fees to” and deleted “State” preceding “Environmental”; in (a)(2), substituted “shall include without limitation” for “will include, but are not limited to” and deleted “and the procurement of performance audit samples” following “evalua-

tions” at the end; and substituted “under this subchapter” for “set forth herein” in (c).

CHAPTER 3

WATER AND AIR POLLUTION GENERALLY

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. STATE EMISSION PLANS — PROCEDURES — APPROVAL.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 8-3-101. Designation of air quality areas.
8-3-102. Ambient air quality standards
— Hydrogen sulfide.

SECTION.

- 8-3-103. Hydrogen sulfide emissions —
Definition.

8-3-101. Designation of air quality areas.

No area within Arkansas shall be redesignated by the state for the purposes of permitting under the Prevention of Significant Deterioration (PSD) of air quality requirements except by an act of the General Assembly.

History. Acts 1985, No. 237, § 1; A.S.A. 1947, § 82-1941.1; Acts 1999, No. 114, § 1.

8-3-102. Ambient air quality standards — Hydrogen sulfide.

(a) After review of scientific literature and similar standards in other states, the Arkansas Pollution Control and Ecology Commission shall promulgate, through procedures set out in § 8-4-202, ambient air quality standards or other appropriate regulatory controls that will protect the public health and the environment from the emission of hydrogen sulfide.

(b)(1) Before the commission proposes an ambient standard or regulatory mechanism concerning hydrogen sulfide that will result in more stringent or restrictive control provisions than are currently provided by Arkansas Department of Environmental Quality permitting practices, the commission shall direct the department to prepare, with the assistance and cooperation of state agencies with appropriate expertise, an economic impact and environmental benefit analysis justifying more stringent or restrictive operating conditions.

(2) The economic impact and environmental benefit analysis shall include without limitation the:

- (A) Benefit to the public health;
- (B) Preservation of environmental quality; and
- (C) Cost to the regulated community and the department.

(3) The conclusions of an economic impact and environmental benefit analysis shall be included in any public notice of the proposed rulemaking and shall be subject to public comment.

History. Acts 1997, No. 856, § 1; 2009, No. 1199, § 4.

8-3-103. Hydrogen sulfide emissions — Definition.

(a) **AMBIENT CONCENTRATION STANDARD.**

(1) Except as provided in subsection (d) of this section, no person shall cause or permit emissions from any facility that result in predicted ambient hydrogen sulfide concentrations at any place beyond the facility's perimeter property boundary greater than eighty parts per billion (80 ppb) for any eight-hour averaging period for residential areas, or greater than one hundred parts per billion (100 ppb) for any eight-hour averaging period for nonresidential areas.

(2) No person shall cause or permit emissions from any facility that result in actual ambient hydrogen sulfide concentrations at any place beyond the facility's perimeter property boundary greater than twenty parts per million (20 ppm) for any five-minute averaging period.

(b) **METHOD OF PREDICTION.** All estimates of ambient concentrations required under this section shall be performed by the Arkansas Department of Environmental Quality or performed by the facility and approved by the department based on the facility's potential to emit hydrogen sulfide, the applicable air quality models, databases, and other requirements specified in the "Guideline on Air Quality Models (Revised)" (1986), supplement A (1987) and supplement B (1993).

(c) **COMPLIANCE PLAN.**

(1) In the event the standard is predicted to be exceeded, the facility or facilities whose emissions are found to contribute to the excess shall be given a reasonable period of time to undertake measures to demonstrate compliance, such as a site-specific risk assessment that demonstrates that the emissions do not pose a risk to human health at the nearest public receptor, ambient monitoring, that demonstrates that the standard is not being exceeded, or undertaking emission reduction measures to reduce emissions of hydrogen sulfide such that the standard will not be exceeded.

(2) The compliance measures and schedule of compliance shall be stated in an enforceable settlement agreement or permit modification or, if the facility does not have an existing permit, an enforcement order.

(d) **CONTROL TECHNOLOGY REQUIREMENTS.**

(1) **GENERAL REQUIREMENTS.** Rather than demonstrate compliance with the ambient limit contained in subsection (a) of this section, a facility may elect to install and operate or continue to operate appropriate control technology that addresses hydrogen sulfide emissions for that source or source category.

(2) **DETERMINATION OF APPROPRIATE CONTROL TECHNOLOGY.**

(A) For purposes of this section, "appropriate hydrogen sulfide control technology" means control technology, operational practices,

or some combination thereof, which will result in the lowest emissions of hydrogen sulfide that a particular facility is reasonably capable of meeting, considering technological and economic feasibility.

(B) Compliance with all applicable portions of the following technology standards, in accordance with the schedule set forth in such standards, shall be deemed to be compliance with appropriate hydrogen sulfide control technology:

(i) Maximum Achievable Control Technology Standards issued pursuant to § 112 of the Clean Air Act, 42 U.S.C. § 7412, promulgated at 40 C.F.R. Part 63, when compliance with such standards will reduce hydrogen sulfide emissions;

(ii) Standards of Performance for New Stationary Sources, promulgated at 40 C.F.R. Part 60:

(a) Standards of Performance for Petroleum Refineries, 40 C.F.R. Part 60, Subpart J;

(b) Standards of Performance for Kraft Pulp Mills, 40 C.F.R. Part 60, Subpart BB;

(c) Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry, 40 C.F.R. Part 60, Subpart VV;

(d) Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries, 40 C.F.R. Part 60, Subpart GGG;

(e) Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants, 40 C.F.R. Part 60, Subpart KKK; or

(f) Standards of Performance for SO₂ Emissions from Onshore Natural Gas Processing, 40 C.F.R. Part 60, Subpart LLL; or

(iii) National Emission Standards for Hazardous Air Pollutants under Title III of the Clean Air Act, 42 U.S.C. § 7601 et seq., and standards of performance promulgated pursuant to § 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), when compliance with such standards will reduce hydrogen sulfide emissions.

(C) A facility that is not subject to one (1) of the technology limits listed in subdivision (d)(2)(B) of this section and that wishes to apply appropriate hydrogen sulfide control technology may apply to the department for a determination of appropriateness at any time, but no later than ninety (90) days after a determination that the ambient standard has been exceeded. The application shall be made on such forms and contain such information as the department may require and shall include a reasonable time schedule for implementation. When making a determination of appropriateness, the department shall follow the procedures used for making permitting decisions, including public participation requirements.

(D) The ambient standard shall not apply to the following facilities:

(i) Natural gas pipelines and related facilities that do not transmit gas with a concentration of hydrogen sulfide in excess of four parts per million (4 ppm);

(ii) Natural gas gathering and production pipelines and related facilities that do not transmit gas with a concentration of hydrogen sulfide in excess of thirty parts per million (30 ppm);

(iii) Brine pipelines that carry natural gas as a byproduct of the brine;

(iv) Wastewater treatment facilities; and

(v) Oil and gas drilling and production operations and facilities from the wellhead to the custodial transfer meter as that term is defined by law.

(e) The Oil and Gas Commission is hereby delegated the authority to set hydrogen sulfide standards for oil and gas drilling and production facilities from the wellhead to the custodial transfer meter.

History. Acts 1999, No. 1136, § 1.

referred to in this section, is codified at 40

U.S. Code. The most recent version of the "Guideline on Air Quality Models",

C.F.R. Part 51, Appendix W.

SUBCHAPTER 2 — STATE EMISSION PLANS — PROCEDURES — APPROVAL

SECTION.

8-3-201. Findings — Purpose.

8-3-202. Definitions.

8-3-203. State plan preferred — State plan dependent on federal emission guidelines.

8-3-204. Appeal of state plan — Adjudicatory process.

SECTION.

8-3-205. Assessing effects of state plan.

8-3-206. Submission of state plan.

8-3-207. Procedures for approval of state plan.

8-3-208. Rate and reliability safety valve.

8-3-201. Findings — Purpose.

(a) The General Assembly finds that:

(1) The United States Environmental Protection Agency has proposed emission guidelines for the regulation of carbon dioxide emissions from existing fossil-fuel-fired electric generating units under § 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d);

(2) The proposed guidelines will have a major impact on the economy of Arkansas by regulating how electricity is produced, transmitted, distributed, and consumed within the state;

(3) The United States Environmental Protection Agency requires states to take the lead role in the regulation of existing fossil-fuel-fired electric generating units under § 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), by developing state plans for the establishment and implementation of performance standards for reducing carbon dioxide emissions from fossil-fuel-fired electric generating units;

(4) The role of the United States Environmental Protection Agency is limited to establishing federal emission guidelines that assist the states in the development of their state plans to regulate carbon dioxide emissions from existing fossil-fuel-fired electric generating units and, in establishing federal emission guidelines, the United States Environmental Protection Agency must defer to the states regarding methods

for regulating fossil-fuel-fired electric generating units within their jurisdictions; and

(5) This subchapter expresses the intent of the General Assembly to exercise the powers of the General Assembly under Arkansas Constitution, Article 5, § 42, to:

(A) Review and approve state agency rules;

(B) Ensure that rules become effective only after review and approval by the legislative committee charged with review of the rules; and

(C) Review rules during the interim or a regular, special, or fiscal session of the General Assembly.

(b) The purpose of this subchapter is to ensure that:

(1) Before the submission of a state plan to the United States Environmental Protection Agency, the regulations of the Arkansas Pollution Control and Ecology Commission that implement the state plan are reviewed and approved by the General Assembly through the Legislative Council consistent with Arkansas Constitution, Article 5, § 42, and any laws promulgated pursuant to Arkansas Constitution, Article 5, § 42; and

(2) The state plan is reviewed through a transparent public process that assesses the full impact of the state plan on rates, reliability, employment, and manufacturing greenhouse gas leakage.

(c) This subchapter does not create a private right of action for enforcement purposes.

History. Acts 2015, No. 382, § 1.

8-3-202. Definitions.

As used in this subchapter:

(1) “Covered electric generating unit” means an existing fossil-fuel-fired electric generating unit within the state that is subject to regulation under federal emission guidelines;

(2) “Federal emission guidelines” means a final rule, regulation, guideline, or other requirement that the United States Environmental Protection Agency may adopt for regulating carbon dioxide emissions from covered electric generating units under § 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d); and

(3) “State plan” means a plan to establish and enforce carbon dioxide emission control measures that the Arkansas Department of Environmental Quality may adopt to implement the obligations of the state under the federal emission guidelines.

History. Acts 2015, No. 382, § 1.

8-3-203. State plan preferred — State plan dependent on federal emission guidelines.

(a)(1) This subchapter does not require the Arkansas Department of Environmental Quality to develop a state plan to regulate carbon

dioxide emissions from existing fossil-fuel-fired electric generating units under § 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d).

(2) However, submission of a state plan is the preferred method of compliance with federal emission guidelines.

(b)(1) Notwithstanding approval by the Legislative Council of submission of a state plan to the United States Environmental Protection Agency or submission by the Governor of a state plan under § 8-3-207, further action by a state agency to implement or enforce a final, approved state plan is dependent upon the final adoption of the federal emission guidelines.

(2) If the federal emission guidelines are not adopted or are adopted and subsequently suspended or held to be contrary to law, a state agency shall suspend or terminate, as appropriate, further action to implement or enforce the state plan.

History. Acts 2015, No. 382, § 1.

8-3-204. Appeal of state plan — Adjudicatory process.

(a) If the Arkansas Department of Environmental Quality proposes to finalize a state plan submittal for review and approval by the United States Environmental Protection Agency, the department shall comply with the procedural requirements for notice and public comment specified in § 8-4-317.

(b)(1) Only a person or an organization that submits comments on the record during the public comment period has standing to appeal the final decision of the department to the Arkansas Pollution Control and Ecology Commission upon written application made within thirty (30) days after the service of notice made under § 8-4-317(b)(2)(A).

(2) An appeal under subdivision (b)(1) of this section shall be processed as a permit appeal under § 8-4-205.

History. Acts 2015, No. 382, § 1.

8-3-205. Assessing effects of state plan.

(a) Before preparing a petition to initiate rulemaking for the development of regulations implementing a state plan for regulating carbon dioxide emissions from covered electric generating units, the Arkansas Department of Environmental Quality shall prepare a report that takes into account the factors specified in § 8-4-312 and the Clean Air Act, 42 U.S.C. § 7401 et seq., as applicable.

(b)(1) In addition to the report specified in subsection (a) of this section, the department shall coordinate with the Arkansas Public Service Commission in the preparation of a report that assesses the effects of the state plan on the electric power sector, including without limitation:

(A) The ability of the state to provide affordable electricity through diversified sources of electricity generation;

(B) The type and amount of electric generating capacity within the state that is likely to withdraw from the state or switch to another fuel;

(C) Stranded investment in electric generating and transmission capacity and other assets and infrastructure;

(D) Potential risks to electric reliability within the state, including without limitation resource adequacy risks, transmission constraints, and natural gas supply and transmission adequacy; and

(E)(i) The amount by which retail electricity and any replacement fuel prices within the state are forecast to increase.

(ii) A rate impact assessment shall consider nonfuel costs, including generation, transmission, distribution, surcharges for renewable energy and energy efficiency, capital investment, upgrades to meet environmental requirements, utility profits, financing costs for new investments, unappreciated capital assets retired prematurely, and other nonfuel costs and surcharges, and the amount of funds contributed from all in-state taxpayers to local, state, and federal subsidies, grants, and credits to fund in-state electric generation sources, electric storage, and energy efficiency.

(2) The department shall further coordinate with the Arkansas Economic Development Commission in the preparation of a report that assesses the effects of the state plan on the electricity consumers within the state, including without limitation:

(A) Disproportionate impacts of electricity and other replacement energy price increases on middle-income and lower-income households;

(B) Employment within the state, including without limitation direct and indirect employment effects and jobs potentially lost within affected sectors of the state's economy;

(C) Economic development within the state, including without limitation effects on manufacturing, commercial, and other sectors of the state's economy;

(D) The competitive position of the state in relation to neighboring states and other economic competitors; and

(E) State and local governments, including without limitation potential impacts resulting from changes in tax revenues and higher government outlays for electric service.

(c) The reports required by this section shall be included with any petition filed by the department to initiate rulemaking for regulations that implement a state plan for regulating carbon dioxide emissions from covered electric generating units.

History. Acts 2015, No. 382, § 1.

8-3-206. Submission of state plan.

(a) The Arkansas Department of Environmental Quality shall not submit a state plan to the United States Environmental Protection Agency under § 8-3-207 if the state plan:

(1) Results in a significant rate increase annually for any rate class of the total delivered electricity cost per kilowatt hour or of the total natural gas cost per thousand cubic feet; or

(2) Results in unreasonable reliability risks.

(b) The department shall not submit a state plan to the United States Environmental Protection Agency until:

(1) The Legislative Council has approved the state plan under § 8-3-207(b); or

(2) The Governor directs the submission of a state plan under § 8-3-207(d).

History. Acts 2015, No. 382, § 1.

8-3-207. Procedures for approval of state plan.

(a) Not later than fifteen (15) days after adopting a state plan, the Arkansas Department of Environmental Quality shall transmit to the cochair of the Legislative Council a copy of the state plan and the accompanying report developed under § 8-3-205.

(b)(1) Upon receiving the state plan and the accompanying report transmitted under subsection (a) of this section and after sufficient time has been provided to assess the state plan and the accompanying report, the Legislative Council shall vote on approval of the state plan.

(2) An affirmative majority vote of the Legislative Council is required for approval of the state plan.

(c) If the Legislative Council fails to approve a state plan under subsection (b) of this section, the department may submit a revised version of the state plan, with an accompanying revised report, to the cochair of the Legislative Council for approval under this section.

(d) Notwithstanding the provisions of this subchapter, in the absence of legislative approval under subsection (b) of this section, the Governor may direct the submission of a state plan to the United States Environmental Protection Agency if, in his or her judgment:

(1) Sufficient time has passed for the Legislative Council to consider a state plan submitted by the department for legislative approval;

(2) Further delay would result in the failure to submit a state plan by the relevant deadline for submission; and

(3) Failure to submit a state plan would result in the imposition of a federal implementation plan.

(e) This subchapter does not eliminate the requirement of legislative approval of rules and regulations promulgated to implement or enforce the state plan subsequently to gubernatorial action under subsection (d) of this section.

History. Acts 2015, No. 382, § 1.

8-3-208. Rate and reliability safety valve.

(a) If a state plan approved under this subchapter would result in a significant increase in the total electric or natural gas bill annually for any customer class, the Arkansas Department of Environmental Quality shall reopen the proceeding under § 8-3-204 and, after the opportunity for a hearing, revise the state plan to satisfy § 8-3-206(a)(1) and transmit the revised state plan to the cochairs of the Legislative Council for approval under § 8-3-207.

(b)(1) Each year the department shall evaluate the impact of electricity rate increases on the energy-intensive-trade-exposed manufacturers and the resulting greenhouse gas leakage.

(2) If increased electric rates are found to be contributing to increased manufacturing greenhouse gas leakage, the department shall reopen the proceeding under § 8-3-204 and, after the opportunity for a hearing, revise the state plan to avoid manufacturing greenhouse gas leakage and transmit the revised state plan to the cochairs of the Legislative Council for approval under § 8-3-207.

History. Acts 2015, No. 382, § 1.

CHAPTER 4

ARKANSAS WATER AND AIR POLLUTION CONTROL ACT

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. WATER POLLUTION.
- 3. AIR POLLUTION.
- 4. LEAD-BASED PAINT-HAZARD ACT. [REPEALED.]

Publisher's Notes. Acts 1981, No. 523, § 7, provided that this act shall not repeal Acts 1949, No. 472 (§ 8-4-101 et seq.), either in whole or in part.

RESEARCH REFERENCES

Am. Jur. 61B Am. Jur. 2d, Pollution Control, § 1 et seq.

Ark. L. Notes. Looney, Handling Administrative Proceedings Before the Arkansas Pollution Control and Ecology Department and Commission, 1988 Ark. L. Notes 23.

Ark. L. Rev. Environmental Law — Third Party Beneficiary Contract as a New Weapon in the Continuing Pollution Fight, 26 Ark. L. Rev. 408.

Lex Aquae Arkansas, 27 Ark. L. Rev. 429.

C.J.S. 39A C.J.S., Health & Env., § 93 et seq.

U. Ark. Little Rock L.J. Wright, In Storage Tank Funds We Trust: An Analysis of Their Role in Protecting the Environment and Small Business, 13 U. Ark. Little Rock L.J. 417.

Wright, Jr. & Thomas III, The Federal/Arkansas Water Pollution Control Programs: Past, Present, and Future, 23 U. Ark. Little Rock L. Rev. 541 (Spring, 2001).

CASE NOTES

ANALYSIS

Causes of Action.

Statute of Limitations.

Causes of Action.

The legislature intended that the State be able to bring claims for natural resource damages under this chapter and under §§ 8-6-201 et seq. and 8-7-201 et seq. *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

Statute of Limitations.

The environmental protection provisions found in this chapter and §§ 8-6-201 et seq. and 8-7-201 et seq., are regulatory and protective rather than penal, and therefore the statute of limitations for penal actions, § 16-56-108, does not apply. *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

8-4-101. Title.

8-4-102. Definitions.

8-4-103. Criminal, civil, and administrative penalties.

8-4-104. Arkansas Pollution Control and Ecology Commission — Members.

SECTION.

8-4-105. Director of the Arkansas Department of Environmental Quality.

8-4-106. Technical and other services and public assistance.

8-4-107. Prosecution of public nuisance actions.

Publisher's Notes. Acts 1965, No. 183, § 6, provided that Acts 1949, No. 472, §§ 1-12 (subchapters 1 and 2 of this chapter) were designated as comprising "Part 1, Water Pollution."

Cross References. County and municipal financing of pollution control facilities, § 14-267-101 et seq.

Permit fees for air, water, and solid waste pollution control activities, § 8-1-101 et seq.

Effective Dates. Acts 1949, No. 472, § 12: approved Mar. 29, 1949. Emergency clause provided: "Whereas, the pollution of the waters and the streams in the State of Arkansas from sewage, industrial waste, garbage, municipal refuse, and many other sources has created and is creating a hazard and danger to the public health of the people of the State of Arkansas, and is endangering the fish and other wildlife of the State of Arkansas; and, whereas, improper and inadequate sewer systems and disposal plants and treatment works cannot be adequately inspected, checked, and supervised under existing laws; and, whereas, present laws to prevent the pollution of the streams and to protect the health and general welfare of the people are inadequate and

there are overlapping authorities as to control and regulations; and whereas, the continuance of such conditions presents an immediate and continuing threat and hazard to the public peace, health, and safety, therefore an emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage."

Acts 1953, No. 232, § 2: Mar. 6, 1953. Emergency clause provided: "It appearing to the Legislature that the membership of the Water Pollution Control Commission as presently constituted does not adequately give representation to the other state agencies interested and informed in matters of water pollution control, and it appearing that there be an immediate public need for such representation, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1961, No. 120, § 9: Feb. 21, 1961. Emergency clause provided: "Whereas, operating experience under Act 472 of 1949 has revealed ambiguous and inadequate provisions which the foregoing

amendments will eliminate and correct, and whereas a continuation of said ambiguous and inadequate provisions would be inimical to the proper control and abatement of water pollution and to the public peace, health, and safety, an emergency is hereby declared to exist and this act shall be in full force and effect from the date of its approval."

Acts 1965, No. 183, § 8: Mar. 10, 1965. Emergency clause provided: "Whereas, the pollution of the air resources of the State of Arkansas by air contaminants can create serious hazards to the public health and welfare of the people; and, whereas, it is the public policy of the state to maintain such a reasonable degree of purity of the air to the end that the least possible injury shall be done to human, plant or animal life or to property, and to maintain public enjoyment of the state's natural resources, consistent with the economic and industrial well-being of the state; and, whereas, existing laws to prevent, control, and abate air pollution are inadequate to protect the health and general welfare of the people; now, therefore, an emergency is hereby declared to exist and this act shall be in full force and effect from the date of its approval."

Acts 1973, No. 262, § 13: Mar. 9, 1973. Emergency clause provided: "It being found that the existing state laws relating to water pollution control do not contain adequate legal authority for the state to continue to administer its own permit program for discharges into navigable waters within the state in lieu of that of the Federal Environmental Protection Agency and it being desirable that such authority be provided, an emergency is, therefore, declared hereby to exist and this act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 743, § 11: Apr. 3, 1975. Emergency clause provided: "It being found that the existing state laws relating to water pollution control do not contain adequate legal authority for the state to continue to administer its own permit program for discharges into navigable waters within the state in lieu of that of the Federal Environmental Protection Agency and it being desirable that such authority be provided, an emergency is, therefore, declared hereby to exist and this act, be-

ing necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1057, § 9: Apr. 9, 1991. Emergency clause provided: "It is hereby found and determined by the 78th General Assembly that the sanctions imposed by current Arkansas law for environmental violations are among the least stringent in the nation. Thus, current law is inadequate to deter environmental violations, and in fact extends an implicit invitation to irresponsible industries. Protection of the environmental integrity of this state is essential to protect the public's health and economic well-being. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 1824, § 20: July 1, 2005. Emergency clause provided: "The General Assembly of the State of Arkansas hereby finds and determines that the decision of the Arkansas Supreme Court in *Arkansas Department of Environmental Quality v. Brighton Corp.* 352 Ark. 396, 102 S.W.3d 458 (2003), has raised questions regarding the factual proof required to establish a claim for cost recovery under the Arkan-

sas Remedial Action Trust Fund Act and regarding the retroactivity of the statute. The General Assembly further finds and determines that the doubts raised by the decision in the Brighton case have created substantial uncertainty regarding the enforcement authority of the Arkansas Department of Environmental Quality and the rights and responsibilities of private

parties under the Arkansas Remedial Action Trust Fund Act, all of which require urgent resolution. Therefore, an emergency is declared to exist; and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005, and shall apply retroactively."

CASE NOTES

Constitutionality.

There is a rational basis for distinguishing between air pollution attributable to commercial incinerators for burning waste materials, on the one hand, and agricultural clearing and residential fireplaces and grills on the other; therefore, the Water and Air Pollution Control Act

does not deny equal protection of the law under Ark. Const., Art. 2, § 18 and the Fourteenth Amendment of the United States Constitution. *J.W. Black Lumber Co. v. Ark. Dep't of Pollution Control & Ecology*, 290 Ark. 170, 717 S.W.2d 807 (1986).

8-4-101. Title.

This chapter may be cited as the "Arkansas Water and Air Pollution Control Act".

History. Acts 1949, No. 472 [Part 1], § 11; 1965, No. 183, § 5; A.S.A. 1947, § 82-1901.

RESEARCH REFERENCES

Ark. L. Rev. Wright & Henry, The Arkansas Air Pollution Control Program: Past, Present and Future. 51 Ark. L. Rev. 227.

CASE NOTES

Cited: Ark. Pollution Control Comm'n v. Coyne, 252 Ark. 792, 481 S.W.2d 322 (1972); Ark. Wildlife Fed'n v. Bekaert Corp., 791 F. Supp. 769 (W.D. Ark. 1992).

8-4-102. Definitions.

As used in this chapter:

(1) "Any wastes" and "pollutants" include sewage, industrial wastes, or other wastes;

(2) "Discharge into the waters of the state" means a discharge of any wastes in any manner that directly or indirectly permits such wastes to reach any of the waters of the state;

(3) "Disposal system" means a system for disposing of sewage, industrial waste, and other wastes and includes sewer systems and treatment works;

(4) "Industrial waste" means any liquid, gaseous, or solid waste substance resulting from any process of industry, mining, manufactur-

ing, trade, or business or from the development of any natural resources;

(5) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, oil, tar chemicals, and all other organic or inorganic substances, not including sewage or industrial waste that may be discharged into the waters of the state;

(6) "Person" means any state agency, municipality, governmental subdivision of the state or the United States, public or private corporation, individual, partnership, association, or other entity;

(7) "Pollution" means such contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous, or solid substance in any waters of the state as will, or is likely to, render the waters harmful, detrimental, or injurious to public health, safety, or welfare, to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life;

(8) "Sewage" means the water-carried waste products from residences, public buildings, institutions, or other buildings, including the excrementitious or other discharge from the bodies of humans or animals, together with such groundwater infiltration and surface water as may be present;

(9) "Sewer system" means pipelines or conduits, pumping stations, and force mains, and all other constructions, devices, and appliances appurtenant thereto, which are used for conducting sewage or industrial waste or other wastes to a point of disposal;

(10) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills, or other works not specifically mentioned in this section, which is installed for the purpose of treating, stabilizing, or disposing of sewage, industrial waste, or other wastes; and

(11) "Waters of the state" means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state.

History. Acts 1949, No. 472 [Part 1], § 1; 1961, No. 120, §§ 1, 2; 1975, No. 743, §§ 2, 3; A.S.A. 1947, § 82-1902; Acts 1993, No. 163, § 9; 1993, No. 165, § 9.

Publisher's Notes. Acts 1961, No. 120, § 8, which amended Acts 1949, No. 472, § 10, provided, in part, that it was the purpose of the act to provide additional and cumulative remedies to prevent, abate, and control the pollution of the

waters of the state, and that nothing contained in the act should be construed to abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor should any provision of the act, or any action done by virtue of the act, be construed as estopping the state, or any municipality or person, as riparian owners or otherwise, in the exercise of their rights in

equity or under the common law or statutory law, to suppress nuisances or to abate pollution.

In Acts 1975, No. 743, § 1, the General Assembly found and declared that since the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.), provided for a permit system (National Pollutant Discharge Elimination System) to regulate the discharge of pollutants to the waters of the United States and provided that permits may be issued by states which are authorized to implement the provisions of that act, it was in the

interest of the people of the State of Arkansas to amend the Arkansas Water and Air Pollution Control Act, as amended (§§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, 8-4-301 — 8-4-314), in a manner so as to provide required legal authority to the State of Arkansas, through the Department of Pollution Control and Ecology, to implement the provisions of the Federal Water Pollution Control Act, as amended, and thereby to continue in effect the state permit program for the prevention and elimination of pollution of all waters of the state, including navigable waters.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Wright, In Storage Tank Funds We Trust: An Analysis of Their Role in Protecting the Envi-

ronment and Small Business, 13 U. Ark. Little Rock L.J. 417.

CASE NOTES

Sewer System.

The lease and service of a toilet does not fit within the definition of a public utility sewer service. *Weiss v. Best Enters., Inc.*, 323 Ark. 712, 917 S.W.2d 543 (1996).

Cited: *Carson v. Hercules Powder Co.*, 240 Ark. 887, 402 S.W.2d 640 (1966); *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

8-4-103. Criminal, civil, and administrative penalties.

(a) CRIMINAL PENALTIES.

(1)(A) Any person that violates any provision of this chapter, that commits any unlawful act under it, or that violates any rule, regulation, or order of the Arkansas Pollution Control and Ecology Commission or the Arkansas Department of Environmental Quality shall be guilty of a misdemeanor.

(B)(i) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to:

(a) Imprisonment for not more than one (1) year;

(b) A fine of not more than twenty-five thousand dollars (\$25,000);

or

(c) Both such fine and imprisonment.

(ii) For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(2)(A) It shall be unlawful for a person to:

(i) Violate any provision of this chapter, commit any unlawful act under it, or violate any rule, regulation, or order of the commission or department and leave the state or remove his or her person from the jurisdiction of this state;

(ii) Purposely, knowingly, or recklessly cause pollution of the waters or air of the state in a manner not otherwise permitted by law

and thereby create a substantial likelihood of adversely affecting human health, animal or plant life, or property; or

(iii) Purposely or knowingly make any false statement, representation, or certification in any document required to be maintained under this chapter or falsify, tamper with, or render inaccurate any monitoring device, method, or record required to be maintained under this chapter.

(B)(i) A person that violates subdivision (a)(2)(A) of this section shall be guilty of a felony.

(ii)(a) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to:

- (1) Imprisonment for not more than five (5) years;
- (2) A fine of not more than fifty thousand dollars (\$50,000); or
- (3) Both such fine and imprisonment.

(b) For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(3)(A) Any person that purposely, knowingly, or recklessly causes pollution of the waters or air of the state in a manner not otherwise permitted by law and thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a felony.

(B)(i) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to:

- (a) Imprisonment for not more than twenty (20) years;
- (b) A fine of not more than two hundred fifty thousand dollars (\$250,000); or
- (c) Both such fine and imprisonment.

(ii) For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(4) Notwithstanding the limits on fines set in subdivisions (a)(1)-(3) of this section, if a person convicted under subdivision (a)(1) of this section, subdivision (a)(2) of this section, or subdivision (a)(3) of this section has derived or will derive pecuniary gains from commission of the offenses, then the person may be sentenced to pay a fine not to exceed two (2) times the amount of the pecuniary gain.

(b) CIVIL PENALTIES. The department may institute a civil action in any court of competent jurisdiction to accomplish any of the following:

(1) Restrain any violation of or compel compliance with the provisions of this chapter and of any rules, regulations, orders, permits, or plans issued pursuant to this chapter;

(2) Affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this chapter;

(3) Recover all costs, expenses, and damages to the department and any other agency or division of the state in enforcing or effectuating the provisions of this chapter, including, but not limited to, natural resource damages;

(4) Assess civil penalties in an amount not to exceed ten thousand dollars (\$10,000) per day for violations of this chapter and of any rules, regulations, permits, or plans issued pursuant to this chapter; or

(5) Recover civil penalties assessed pursuant to subsection (c) of this section.

(c)(1)(A) Any person that violates any provision of this chapter and regulations, rules, permits, or plans issued pursuant to this chapter may be assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation.

(B) Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.

(2)(A) No civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing in accordance with regulations adopted by the commission.

(B) All hearings and appeals arising under this chapter shall be conducted in accordance with the procedures prescribed by §§ 8-4-205, 8-4-212, and 8-4-218 — 8-4-229.

(C) These administrative procedures may also be used to recover all costs, expenses, and damages to the department and any other agency or subdivision of the state in enforcing or effectuating the provisions of this chapter, including, but not limited to, natural resource damages.

(d)(1)(A) Before assessing a civil penalty under subsection (c) of this section, the Director of the Arkansas Department of Environmental Quality shall provide public notice of and a reasonable opportunity to comment on the proposed issuance of the order.

(B) If the civil penalty is being assessed under an order on consent, the order shall not be effective until thirty (30) days after the publication of notice of the order.

(C) Notice shall also be given to each member of the commission.

(D) If a civil penalty is being assessed for a violation that occurs within the corporate limits of any municipality in Arkansas, a copy of the public notice shall be delivered to the chief executive officer of the municipality in which the alleged violation occurred, along with a copy of any proposed order concerning the violation, and the municipality shall be given a reasonable opportunity to comment on the proposed order consistent with the public notice and comment requirements of this chapter and regulations promulgated under this chapter.

(2) Notice of any administrative enforcement order shall contain the following:

(A) The identity of the person or facility alleged to be in violation;

(B) The location by city or county of the alleged violation;

(C) A brief description by environmental media, that is, water, air, solid waste, or hazardous waste, impacted by the alleged violation;

(D) The type of administrative action proposed, that is, a consent order, a notice of violation, or an emergency order; and

(E) The amount of penalty to be assessed.

(3)(A) Any person that comments on a proposed assessment of a penalty under this subsection shall be given notice of any hearing held under this subsection.

(B) In any hearing held under this subsection, the person shall have a right to intervene upon timely application.

(4)(A)(i) If no adjudicatory hearing is held on a proposed order, any person that commented on the proposed order may petition the commission to set aside the order and provide an adjudicatory hearing.

(ii) A petition to set aside such an order must be filed with the commission within thirty (30) days of service of the order.

(B) If the evidence presented by the petitioner is material and was not considered in the issuance of the order and the commission finds in light of the new evidence that the order is not reasonable and appropriate, it may set aside the order and provide a hearing.

(C) If the commission denies a hearing under this subdivision (d)(4), it shall provide to the petitioner notice of and its reasons for the denial. The denial of such a hearing may be appealed pursuant to § 8-4-222.

(5) On its own initiative, the commission may institute review of any enforcement action taken by the director within thirty (30) days of the effective date of the order.

(e) As an alternative to the limits on civil penalties set in subsections (b) and (c) of this section, if a person found liable in actions brought under subsection (b) of this section or subsection (c) of this section has derived pecuniary gain from commission of the offenses, then he or she may be ordered to pay a civil penalty equal to the amount of the pecuniary gain.

(f)(1) All moneys collected as reimbursement for expenses, costs, and damages to the department shall be deposited into the operating fund of the department.

(2) All moneys collected as civil penalties shall be deposited into the Hazardous Substance Remedial Action Trust Fund as provided by § 8-7-509.

(3)(A) In his or her discretion, the director may authorize in-kind services or cash contributions as partial mitigation of cash penalties for use in projects or programs designed to advance environmental interests.

(B) The violator may provide in-kind services or cash contributions as directed by the department by utilizing the violator's own expertise, by hiring and compensating subcontractors to perform the services, by arranging and providing financing for the services, or by other financial arrangements initiated by the department in which the violator and the department retain no monetary benefit, however remote.

(C) The services shall not duplicate or augment services already provided by the department through appropriations of the General Assembly.

(4) All moneys collected that represent the costs, expenses, or damages of other agencies or subdivisions of the state shall be distributed to the appropriate governmental entity.

(g)(1) Pursuant to duly promulgated ordinances or regulations, any governmental entity permitted to operate a publicly owned treatment works shall have the authority to collect in a court of competent jurisdiction civil or criminal penalties in an amount not to exceed one thousand dollars (\$1,000) for each violation by industrial users of pretreatment standards or requirements.

(2) Such a criminal or civil action may be initiated only after a majority vote of the entity's governing body resolves to pursue such an action.

(3) For the purpose of this subsection, each day of a continuing violation may be deemed a separate violation.

(h) The culpable mental states referenced throughout this section shall have the same definitions as set out in § 5-2-202.

(i) Solicitation, as defined by § 5-3-301 et seq., or conspiracy, as defined by § 5-3-401 et seq., to commit any criminal act proscribed by this section and §§ 8-6-204 and 8-7-204 shall be punishable as follows:

(1) Any solicitation or conspiracy to commit an offense under this section that is a misdemeanor shall be a misdemeanor subject to:

(A) Fines not to exceed fifteen thousand dollars (\$15,000) per day of violation;

(B) Imprisonment for more than six (6) months; or

(C) Both such fines and imprisonment;

(2) Any solicitation or conspiracy to commit an offense under this section that is a felony subject to fines of fifty thousand dollars (\$50,000) per day or imprisonment up to five (5) years shall be a felony subject to:

(A) Fines up to thirty-five thousand dollars (\$35,000) per day;

(B) Imprisonment up to two (2) years; or

(C) Both such fines and imprisonment;

(3) Any solicitation or conspiracy to commit an offense under this section that is a felony subject to fines of one hundred thousand dollars (\$100,000) per day or imprisonment up to ten (10) years shall be a felony subject to:

(A) Fines up to seventy-five thousand dollars (\$75,000) per day;

(B) Imprisonment up to seven (7) years; or

(C) Both such fines and imprisonment; and

(4) Any solicitation or conspiracy to commit an offense under this section that is a felony subject to fines of two hundred fifty thousand dollars (\$250,000) per day or imprisonment up to twenty (20) years shall be a felony subject to:

(A) Fines up to one hundred fifty thousand dollars (\$150,000) per day;

(B) Imprisonment up to fifteen (15) years; or

(C) Both such fines and imprisonment.

(j) In cases considering suspension of sentence or probation, efforts or commitments by the defendant to remediate any adverse environ-

mental effects caused by the defendant's activities may be considered by the court to be restitution as contemplated by § 5-4-301.

(k) A business organization or its agents or officers may be found liable under this section in accordance with the standards set forth in § 5-2-501 et seq. and sentenced to pay fines in accordance with the provisions of § 5-4-201(d) and (e).

(1)(1) A person that uses a cleaning agent in violation of this chapter is guilty of a misdemeanor and upon conviction is subject to a fine not exceeding one hundred dollars (\$100).

(2) A person that sells, distributes, or manufactures a cleaning agent in violation of this chapter is guilty of a misdemeanor and upon conviction is subject to a fine not exceeding one thousand dollars (\$1,000).

(3)(A) The department may seize any cleaning agent held for sale or distribution in violation of this chapter.

(B) The seized cleaning agents are considered forfeited.

History. Acts 1949, No. 472, [Part 1], § 9; 1973, No. 262, § 10; 1975, No. 743, § 8; 1983, No. 733, § 1; A.S.A. 1947, § 82-1909; Acts 1987, No. 529, § 1; 1991, No. 884, § 1; 1991, No. 1057, §§ 3, 5; 1993, No. 163, § 10; 1993, No. 165, § 10; 1993, No. 454, § 2; 1993, No. 461, § 2; 1993, No. 731, § 3; 1995, No. 384, § 5; 1995, No. 895, § 1; 2003, No. 133, § 1; 2005, No. 1824, § 5; 2013, No. 1127, § 1.

A.C.R.C. Notes. Acts 2005, No. 1824, § 1, provided: "The purpose of this Act is to resolve questions that have arisen regarding the phrase 'at the time of disposal' in Arkansas Code § 8-7-512(a)(3) and § 8-7-512(a)(4), as interpreted by the Arkansas Supreme Court in *Arkansas Department of Environmental Quality v. Brighton Corporation, et al.*, 352 Ark. 396, 102 S.W. 3d 458 (2003), and to clarify that the Arkansas Remedial Action Trust Fund Act is remedial in nature and should be applied retroactively."

Publisher's Notes. Acts 1973, No. 262, § 1, provided that it was the purpose of the act to amend the Arkansas Water and Air Pollution Control Act (§ 8-4-101 et seq.), in such manner as to qualify and provide required legal authority to the State of Arkansas, through Department of Pollution Control and Ecology (now the Arkansas Pollution Control and Ecology Commission), for participation in the National Pollutant Discharge Elimination System as provided by the Federal Water Pollution Control Act Amendments of 1972, adopted October 18, 1972 (codified

primarily as 33 U.S.C. 1251 et seq.), and to continue in effect the state permit program for the prevention and elimination of pollution of all waters of the state, including navigable waters.

For legislative findings and declarations for Acts 1975, No. 743, see Publisher's Notes to § 8-4-102.

Acts 1991, No. 1057, § 1, provided: "The General Assembly finds and determines that the criminal and civil penalties imposed by current law do not accurately reflect the degree of concern which the state places upon its environmental resources. The current criminal penalties for hazardous waste and other violations are among the lowest in the nation. Civil penalties for violations of the state water, air, solid waste and hazardous waste pollution control statutes are set at the minimum necessary to receive federally delegated programs. In declaring itself 'The Natural State,' the State of Arkansas demonstrated its commitment to its environmental resources. This commitment must be reflected in its environmental enforcement program. This act shall be liberally construed so as to achieve remedial intent."

Acts 1991, No. 1057, § 5, is also codified as §§ 8-6-204 (f)-(i) and 8-7-204 (f)-(i).

Acts 1993, No. 731, § 1, provided: "Purpose. The state of Arkansas has an abundance of environmental concerns which need research and study, as well as concerns which have an immediate remedy but are absent funds to facilitate their

implementation. This amendment serves to clarify the existing use of in-kind services as penalties, to include cash contributions for use in worthy environmental projects and to advance environmental interests."

Amendments. The 2013 amendment, in the introductory language of (i), inserted "as defined by § 5-3-301 et seq." and deleted "§ 5-3-301 et seq. and" following "as defined by".

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

CASE NOTES

ANALYSIS

Construction.
Abatement of Dangerous Condition.
Civil Action Not Filed.
Taking of Property.

Construction.

The provisions in this chapter for assessing administrative penalties are comparable to those in 33 U.S.C. § 1319(g). *Ark. Wildlife Fed'n v. ICI Ams. Inc.*, 842 F. Supp. 1140 (E.D. Ark. 1993), *aff'd*, 29 F.3d 376 (8th Cir. 1994).

Abatement of Dangerous Condition.

Where the record showed that dioxin was escaping from a plant site in quantities that under an acceptable, but unproved, theory could be considered as teratogenic, mutagenic, fetotoxic, and carcinogenic, there was a reasonable medical concern over the public health, and therefore the escape of dioxin into a creek and bayou from the plant site constituted an imminent and substantial endangerment to the health of persons and was subject to abatement. *United States v. Vertac Chem. Corp.*, 489 F. Supp. 870 (E.D. Ark. 1980), *aff'd*, 961 F.2d 796 (8th Cir. 1992).

Civil Action Not Filed.

Where, pursuant to § 8-4-207, department of pollution control and ecology

sought to obtain assessment of a civil penalty by the circuit court against defendant company without filing any civil action under this section, and there was no current violation at the time the plaintiff sought the penalty, trial court properly dismissed the action on the ground that it had no jurisdiction to consider the matter prior to an administrative hearing. *Ark. Dep't of Pollution Control & Ecology v. B.J. McAdams, Inc.*, 303 Ark. 144, 792 S.W.2d 611 (1990).

Taking of Property.

The lumber company did not show that compliance with the Water and Air Pollution Control Act would be commensurate to a taking of its property where there was no proof of the company's net worth, nor anything to show a before and after value relative to the cost of compliance, and there was no proof that other options were open to the company. *J.W. Black Lumber Co. v. Ark. Dep't of Pollution Control & Ecology*, 290 Ark. 170, 717 S.W.2d 807 (1986).

Cited: *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

8-4-104. Arkansas Pollution Control and Ecology Commission — Members.

(a) There is created and established an Arkansas Pollution Control and Ecology Commission.

(b) The Arkansas Pollution Control and Ecology Commission shall be composed of thirteen (13) members:

(1)(A) The Governor, by and with the advice and consent of the Senate, shall appoint seven (7) members.

(B) Each congressional district shall be represented on the Arkansas Pollution Control and Ecology Commission by at least one (1) member, and no district shall have more than two (2) members of the seven (7) appointees.

(C)(i) The Governor shall not appoint a member to represent any specific or special interest group, organization, or philosophy.

(ii) However, in making appointments to the Arkansas Pollution Control and Ecology Commission, the Governor shall appoint individuals who have knowledge or expertise in matters within the jurisdiction of the Arkansas Pollution Control and Ecology Commission, including government, business or industry, agriculture and livestock, forestry, health, ecology, recreation and tourism, and geology.

(D) Each member appointed by the Governor shall be appointed for a term of four (4) years; and

(2) The other six (6) members of the Arkansas Pollution Control and Ecology Commission shall be:

(A) The Director of the Department of Health or his or her designee; and

(B)(i) The directors of the Arkansas State Game and Fish Commission, the Arkansas Forestry Commission, the Arkansas Natural Resources Commission, the Oil and Gas Commission, and the Arkansas Geological Survey.

(ii) Any director specified in subdivision (b)(2)(B)(i) of this section may designate the agency's deputy director or assistant director to serve in lieu of the director.

(c) Elected city, county, and state officials shall not serve on the Arkansas Pollution Control and Ecology Commission after the expiration of any current member's term.

(d) In the event of a vacancy in the membership of the Arkansas Pollution Control and Ecology Commission, the Governor shall appoint a person to fill the vacancy temporarily who shall serve until the next meeting of the Senate, when some person shall be appointed by the Governor, by and with the consent and approval of the Senate, to serve the remainder of the unexpired term.

(e)(1) The chair and vice chair shall be elected annually.

(2) The members of the Arkansas Pollution Control and Ecology Commission representing the state agencies shall not serve as chair or vice chair.

(f)(1)(A) The Arkansas Pollution Control and Ecology Commission shall hold at least four (4) regular meetings in each calendar year at times and places to be fixed by the Arkansas Pollution Control and Ecology Commission and such other meetings as may be necessary.

(B) Special meetings may be called at the discretion of the chair, and they shall be called by him or her upon written request of two (2) members of the Arkansas Pollution Control and Ecology Commission

by delivery of written notice to each member of the Arkansas Pollution Control and Ecology Commission.

(2) Nine (9) members of the Arkansas Pollution Control and Ecology Commission shall constitute a quorum to transact business in both regular and special meetings.

(g)(1) Each member of the Arkansas Pollution Control and Ecology Commission representing state agencies shall receive no additional salary or per diem for services as a member of the Arkansas Pollution Control and Ecology Commission but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(2) The other seven (7) members appointed by the Governor may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1949, No. 472 [Part 1], § 2; 1953, No. 232, § 1; 1959, No. 211, § 1; 1965, No. 183, § 2; 1985, No. 930, § 1; A.S.A. 1947, § 82-1903; Acts 1991, No. 744, § 1; 1997, No. 250, § 44; 2001, No. 318, § 1; 2005, No. 2224, § 1.

Publisher's Notes. Acts 1949, No. 472, § 2, in part, created and established within the State Board of Health a Water Pollution Control Commission. Acts 1965, No. 183, § 2, in part, amended the section to create and establish the Arkansas Pollution Control Commission.

Acts 1971, No. 38, § 8, in part, transferred the Pollution Control Commission and its functions, powers, and duties to the Department of Pollution Control and Ecology by a type 4 transfer and provided in part, that any reference to the Pollution Control Commission and its director would be deemed to refer to the Department of Pollution Control and Ecology and the director of the department, respectively. However, § 25-2-107 provides that governing bodies such as the Pollution Control Commission shall retain their statutory authority, powers, duties, and functions upon transfer by a type 4 transfer.

Additionally, Acts 1971, No. 38, § 8, referred to the Commission on Pollution Control and Ecology.

Acts 1973, No. 262, § 2, which amended Acts 1949, No. 472, § 2(b), referred to a Commission on Pollution Control and Ecology, which is probably the same commission as the Arkansas Pollution Control Commission created by Acts 1949, No. 472, § 2(a) as amended. However, Acts 1973, No. 262 did not change the name of the commission created in Acts 1949, No. 472, § 2(a) as Acts 1985, No. 930, § 1, in part, amended Acts 1949, No. 472, § 2, to create an Arkansas Pollution Control and Ecology Commission.

Acts 1991, No. 744, § 1, provided, in part, that initial members of the Arkansas Pollution Control and Ecology Commission shall be appointed by the Governor as follows: one (1) member for one (1) year, two (2) members for two (2) years, two (2) members for three (3) years and two (2) members for four (4) years. The section further provided that those members serving on July 1, 1991, would continue to serve for the remainder of their terms.

8-4-105. Director of the Arkansas Department of Environmental Quality.

(a)(1) The executive head of the Arkansas Department of Environmental Quality shall be the Director of the Arkansas Department of Environmental Quality, who shall be appointed by the Governor with the advice and consent of the Senate, and shall serve at the pleasure of the Governor.

(2) The director, with the advice and consent of the Governor, shall appoint the heads of the divisions of the department, including the

Division of Water Pollution Control, the Division of Air Pollution Control, the Division of Solid Waste Management, the Division of Environmental Preservation, the Division of Administration, and such other divisions as may be established.

(3) All of the personnel of the department shall be employed by and serve at the pleasure of the director. However, nothing in this subdivision (a)(3) shall be construed to reduce any right which an employee shall have under any civil service or merit system.

(b)(1) The director shall be the executive officer and active administrator of all pollution control activities.

(2) All of the powers of the Arkansas Pollution Control and Ecology Commission under §§ 8-4-201(b)(5), 8-4-203, and 8-4-204 relating to plans and specifications for disposal systems and permits for the discharge of sewage, industrial wastes, or other wastes into the waters of the state are vested in the director.

History. Acts 1949, No. 472 [Part 1], § 2; 1963, No. 503, § 1; 1973, No. 262, § 2; A.S.A. 1947, § 82-1903; Acts 1991, No. 744, § 2; 1999, No. 1164, § 16.

pose of Acts 1973, No. 262, see Publisher's Notes to § 8-4-103.

Cross References. Arkansas Department of Environmental Quality established, § 25-14-101.

Publisher's Notes. For legislative pur-

8-4-106. Technical and other services and public assistance.

(a) Technical, scientific, legal, or other services may be performed, insofar as practicable, by personnel of other state agencies and educational institutions and the Attorney General. However, the personnel of these state agencies shall receive no additional salary or wages for their services to the Arkansas Department of Environmental Quality.

(b) The Director of the Arkansas Department of Environmental Quality, however, may employ and compensate, within appropriations available, consultants and such assistants and employees as may be necessary to carry out the provisions of this chapter and prescribe their powers and duties.

History. Acts 1949, No. 472 [Part 1], § 2; 1963, No. 503, § 1; 1965, No. 183, § 3; 1973, No. 262, § 3; A.S.A. 1947, § 82-1903; Acts 1991, No. 744, § 3; 1999, No. 1164, § 17.

Publisher's Notes. For legislative purpose of Acts 1973, No. 262, see Publisher's Notes to § 8-4-103.

8-4-107. Prosecution of public nuisance actions.

In any legal action arising from, relating to, or including violations of laws or regulations charged to the enforcement authority of the Arkansas Department of Environmental Quality that also alleges the existence of a public nuisance at common law, the Attorney General or the department may serve as the instrumentality of the state authorized to initiate and prosecute such action.

History. Acts 1991, No. 516, § 4; 1999, No. 1164, § 18.

RESEARCH REFERENCES

ALR. Remedies for sewage treatment plant alleged or deemed to be nuisance. 101 A.L.R.5th 287.

SUBCHAPTER 2 — WATER POLLUTION

SECTION.

- 8-4-201. Powers and duties of department and commission generally.
- 8-4-202. Rules and regulations.
- 8-4-203. Permits generally — Definitions.
- 8-4-204. Permits — Revocation.
- 8-4-205. Permits — Hearings upon denial, revocation, or modification and other permit actions — Definition.
- 8-4-206. State water pollution control agency — General authority.
- 8-4-207. State water pollution control agency — Powers and duties generally.
- 8-4-208. State water pollution control agency — Administration of permit program generally.
- 8-4-209. State water pollution control agency — Participation of certain persons prohibited in approval of permit applications.
- 8-4-210. Investigations and hearings generally.
- 8-4-211. Declaratory orders.
- 8-4-212. Adjudicatory hearings and orders.
- 8-4-213. Conclusiveness of commission actions.
- 8-4-214. Service of notice, orders, etc.
- 8-4-215. Intergovernmental cooperation.
- 8-4-216. Information and inspections.

SECTION.

- 8-4-217. Unlawful actions.
- 8-4-218. Violations of chapter, orders, rules, etc. — Hearings — Notice.
- 8-4-219. Violations of chapter, orders, rules, etc. — Hearings — Conduct.
- 8-4-220. Violation of chapter, orders, rules, etc. — Order of department without hearing.
- 8-4-221. Violations of chapter, orders, rules, etc. — Hearing — Orders.
- 8-4-222. Appeals — Entitlement.
- 8-4-223. Appeals — Notice.
- 8-4-224. Appeals — Parties.
- 8-4-225. Appeals — Venue.
- 8-4-226. Appeal — Response by commission and record.
- 8-4-227. Appeal — Review by circuit court.
- 8-4-228. Appeal — Stay of proceedings.
- 8-4-229. Appeals, proceedings, etc. — Presumptions.
- 8-4-230. Temporary variances and interim authority.
- 8-4-231. Effectiveness of regulations or orders.
- 8-4-232. Nutrient water quality trading programs — Definition.
- 8-4-233. Nutrient Water Quality Trading Advisory Panel — Created — Members — Duties.
- 8-4-234. Short-term activity authorization.

Publisher's Notes. Acts 1961, No. 120, § 8, which amended Acts 1949, No. 472, § 10, provided, in part, that it was the purpose of the act to provide additional and cumulative remedies to prevent, abate, and control the pollution of the waters of the state and that nothing con-

tained in the act should be construed to abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor should any provision of the act, or any action done by virtue of the act, be construed as estopping the state, or any mu-

nicipality or person, as riparian owners or otherwise, in the exercise of their rights in equity or under the common law or statutory law, to suppress nuisances or to abate pollution.

Acts 1965, No. 183, § 6, provided that Acts 1949, No. 472, §§ 1-12 (subchapters 1 and 2 of this chapter) were designated as comprising "Part 1, Water Pollution."

Acts 1973, No. 262, § 1, provided that it was the purpose of this act to amend the Arkansas Water and Air Pollution Control Act (§ 8-4-101 et seq.) in such manner as to qualify and provide required legal authority to the State of Arkansas, through the Department of Pollution Control and Ecology for participation in the National Pollutant Discharge Elimination System as provided by the Federal Water Pollution Control Act Amendments of 1972, adopted October 18, 1972 (codified primarily as 33 U.S.C. 1251 et seq.), and to continue in effect the state permit program for the prevention and elimination of pollution of all waters of the state, including navigable waters.

In Acts 1975, No. 743, § 1, the General Assembly found and declared that since the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.), provides for a permit system (National Pollutant Discharge Elimination System) to regulate the discharge of pollutants to the waters of the United States and provides that permits may be issued by states which are authorized to implement the provisions of that act, it was in the interest of the people of the State of Arkansas to amend the Arkansas Water and Air Pollution Control Act, as amended (§§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, 8-4-301 — 8-4-314), in a manner so as to provide required legal authority to the State of Arkansas, through the Department of Pollution Control and Ecology, to implement the provisions of the Federal Water Pollution Control Act, as amended, and thereby to continue in effect the state permit program for the prevention and elimination of pollution of all waters of the state, including navigable waters.

Acts 1997, No. 1219, § 1, provided: "Legislative intent. With Act 1230 of 1991, the General Assembly sought to delineate the respective responsibilities of the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Pollution Control & Ecology. Con-

fusion on these issues in the public's perception continues, however, primarily because of the similarity in the names of these entities. The purpose of this Act is to achieve the legislative intent of Act 1230 of 1991 and to definitively assign the executive, adjudicatory, and rulemaking roles for the State's regulatory functions concerning protection of the environment."

Effective Dates. Acts 1961, No. 120, § 9: Feb. 21, 1961. Emergency clause provided: "Whereas, operating experience under Act 472 of 1949 has revealed ambiguous and inadequate provisions which the foregoing amendments will eliminate and correct, and whereas a continuation of said ambiguous and inadequate provisions would be inimical to the proper control and abatement of water pollution and to the public peace, health, and safety, an emergency is hereby declared to exist and this act shall be in full force and effect from the date of its approval."

Acts 1965, No. 183, § 8: Mar. 10, 1965. Emergency clause provided: "Whereas, the pollution of the air resources of the State of Arkansas by air contaminants can create serious hazards to the public health and welfare of the people; and, whereas, it is the public policy of the state to maintain such a reasonable degree of purity of the air to the end that the least possible injury shall be done to human, plant or animal life or to property, and to maintain public enjoyment of the state's natural resources, consistent with the economic and industrial well-being of the state; and, whereas, existing laws to prevent, control, and abate air pollution are inadequate to protect the health and general welfare of the people; now, therefore, an emergency is hereby declared to exist and this act shall be in full force and effect from the date of its approval."

Acts 1973, No. 262, § 13: Mar. 9, 1973. Emergency clause provided: "It being found that the existing state laws relating to water pollution control do not contain adequate legal authority for the state to continue to administer its own permit program for discharges into navigable waters within the state in lieu of that of the Federal Environmental Protection Agency and it being desirable that such authority be provided, an emergency is, therefore, declared hereby to exist and this act, being necessary for the immediate preserva-

tion of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 743, § 11: Apr. 3, 1975. Emergency clause provided: "It being found that the existing state laws relating to water pollution control do not contain adequate legal authority for the state to continue to administer its own permit program for discharges into navigable waters within the state in lieu of that of the Federal Environmental Protection Agency and it being desirable that such authority be provided, an emergency is, therefore, declared hereby to exist and this act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 943, § 6: Apr. 5, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that, in order to avoid the needless disruption of business in this state, the director of the Department of Pollution Control and Ecology should be given authority to grant temporary variances and interim authority to construct or operate regulated activities. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2009, No. 369, § 2: Mar. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that establishing financial assurance requirements for the closure of commercial facilities that engage in land application or storage of fluids generated or utilized during exploration or production phases of oil or gas operations is necessary to protect human health and the environment and that a delay in the effective date of this Act may result in harm to human health or the environment. Therefore, an emergency is declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of its passage or approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the

veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2013, No. 954, § 3. Emergency clause failed to pass. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that clarification of the methodology for developing, implementing, and assessing state water quality standards for minerals and the procedure for identifying and protecting the use of domestic water supplies is needed to avoid unnecessary regulation and the inefficient use and allocation of scarce resources; and that this act is immediately necessary to ensure that existing regulatory requirements provide demonstrable benefits at reasonable costs and available resources are wisely allocated. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013 (1st Ex. Sess.), No. 4, § 2: Oct. 21, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that in response to the General Assembly's adoption of Act 954 of 2013, the United States Environmental Protection Agency has taken adverse action with respect to the Arkansas Department of Environmental Quality's ability to issue permits under the National Pollutant Discharge Elimination System Program; and that an immediate repeal of Act 954 of 2013 is necessary to alleviate such adverse action by the agency. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 61C Am. Jur. 2d, Pollution Control, § 675 et seq.

Ark. L. Notes. Looney, Handling Administrative Proceedings Before the Arkansas Pollution Control and Ecology Department and Commission, 1988 Ark. L. Notes 23.

C.J.S. 39A C.J.S., Waters, § 94 et seq. 39A C.J.S., Health & Env., § 162 et seq.

U. Ark. Little Rock L.J. Legislative Survey, Civil Procedure, 8 U. Ark. Little Rock L.J. 555.

Note, Environmental Law — The Clean Water Act — Congress has Entrusted the EPA, Not the Courts, with the Final Word on Federal Water Pollution Regulatory Law. *Arkansas v. Oklahoma*, 112 S. Ct. 1046, 503 U.S. 91, 117 L. Ed. 2d 239 (1992), 15 U. Ark. Little Rock L.J. 117.

Legislative Survey, Environmental Law, 16 U. Ark. Little Rock L.J. 111.

CASE NOTES

Construction.
This subchapter is comparable to § 309(g) of the Clean Water Act, 33 U.S.C.

§ 1319(g). *Ark. Wildlife Fed’n v. ICI Ams. Inc.*, 842 F. Supp. 1140 (E.D. Ark. 1993), *aff’d*, 29 F.3d 376 (8th Cir. 1994).

8-4-201. Powers and duties of department and commission generally.

- (a) The Arkansas Department of Environmental Quality or its successor is given and charged with the following powers and duties:
- (1) ENFORCEMENT OF LAWS. To administer and enforce all laws and regulations relating to the pollution of any waters of the state;

(2) INVESTIGATIONS AND SURVEYS.

(A) To investigate the extent, character, and effect of the pollution of the waters of this state; and

(B) To conduct investigations, research, surveys, and studies and gather data and information necessary or desirable in the administration or enforcement of pollution laws;

(3) PROGRAM. To prepare a comprehensive program for the elimination or reduction of the pollution of the waters of this state, including application for and delegation of federal regulatory programs; and

(4) PLANS OF DISPOSAL SYSTEMS. To require to be submitted and to approve plans and specifications for disposal systems, or any part of them, and to inspect the construction thereof for compliance with the approved plans thereof.
- (b) The Arkansas Pollution Control and Ecology Commission is given and charged with the following powers and duties:
- (1)(A) Promulgation of rules and regulations, including water quality standards and the classification of the waters of the state and moratoriums or suspensions of the processing of types or categories of permits, implementing the substantive statutes charged to the department for administration.

(B) In promulgation of such rules and regulations, prior to the submittal to public comment and review of any rule, regulation, or

change to any rule or regulation that is more stringent than federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule or regulation on the people of the State of Arkansas, including those entities that will be subject to the regulation.

(C) The commission shall promptly initiate rulemaking proceedings to further implement the analysis required under subdivision (b)(1)(B) of this section.

(D) The extent of the analysis required under subdivision (b)(1)(B) of this section shall be defined in the commission's rulemaking required under subdivision (b)(1)(C) of this section. It will include a written report that shall be available for public review along with the proposed rule in the public comment period.

(E) Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent regulation;

(2) Promulgation of rules, regulations, and procedures not otherwise governed by applicable law that the commission deems necessary to secure public participation in environmental decision-making processes;

(3) Promulgation of rules and regulations governing administrative procedures for challenging or contesting department actions;

(4) In the case of permitting or grants decisions, provide the right to appeal a permitting or grants decision rendered by the Director of the Arkansas Department of Environmental Quality or his or her delegatee;

(5) In the case of an administrative enforcement or emergency action, provide the right to contest any such action initiated by the director;

(6) Instruct the director to prepare such reports or perform such studies or investigations as will advance the cause of environmental protection in the state;

(7) Make recommendations to the director regarding overall policy and administration of the department, provided, however, that the director shall always remain within the plenary authority of the Governor; and

(8) Upon a majority vote, initiate review of any director's decision.

History. Acts 1949, No. 472, [Part 1], No. 163, § 11; 1993, No. 165, § 11; 1997, § 3; A.S.A. 1947, § 82-1904; Acts 1993, No. 1219, § 5; 1999, No. 1164, § 19.

CASE NOTES

Environmental Protection Agency.

Environmental Protection Agency (EPA) was entitled to summary judgment, because EPA had authority to look at downstream effects, company failed to adequately demonstrate affected waters

would be protected, and EPA's refusal to approve state's proposed water quality criteria on basis of incomplete information was not arbitrary or capricious. *El Dorado Chem. Co. v. United States EPA*, 763 F.3d 950 (8th Cir. 2014).

Cited: Ark. Comm'n of Pollution Control & Ecology v. Husky Indus., Inc., 293 Ark. 249, 737 S.W.2d 157 (1987).

8-4-202. Rules and regulations.

(a) The Arkansas Pollution Control and Ecology Commission is given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules and regulations implementing or effectuating the powers and duties of the Arkansas Department of Environmental Quality and the commission under this chapter.

(b) Without limiting the generality of this authority, these rules and regulations may, among other things, prescribe:

(1) Effluent standards specifying the maximum amounts or concentrations and the physical, thermal, chemical, biological, and radioactive nature of the contaminants that may be discharged into the waters of this state or into publicly owned treatment facilities;

(2) Requirements and standards for equipment and procedures for monitoring contaminant discharges at their sources, including publicly owned treatment facilities and industrial discharges into such facilities, the collection of samples, and the collection, reporting, and retention of data resulting from such monitoring; and

(3) Water quality standards, performance standards, and pretreatment standards.

(c)(1) Any person shall have the right to petition the commission for the issuance, amendment, or repeal of any rule or regulation. Within sixty (60) days from the date of the submission of a petition, the commission shall either institute rulemaking proceedings or give the petitioner written notice denying the petition, together with a written statement setting out the reasons for denial.

(2) In the event the petition is denied, the decision of the commission will be deemed a final order subject to appeal as provided in subdivision (d)(5) of this section.

(3) The record for appeal in a petition denial shall consist of the petition for rulemaking filed with the commission, the commission's written statement setting out the reasons for denial, and any document referenced therein.

(d)(1)(A) Before the adoption, amendment, or repeal of any rule or regulation or before suspending the processing of a type or category of permits or the declaration of a moratorium on a type or category of permits, the commission shall give at least thirty (30) days' notice of its intended action.

(B) The notice shall include:

(i) A statement of the substance of the intended action;

(ii) A description of the subjects and issues involved; and

(iii) The time, place, and manner in which interested persons may make comments.

(C) The notice shall be mailed or emailed to all persons who have requested advance notice of rulemaking proceedings.

(D) The notice shall also be published at least two (2) times in newspapers having a general statewide circulation and in the appropriate industry, trade, or professional publications the commission may select.

(2)(A) All interested parties shall be afforded a reasonable opportunity to:

(i) Submit written data, information, views, opinions, and arguments; and

(ii) Make oral statements concerning the proposed rule, regulation, suspension, or moratorium prior to a decision being rendered by the commission.

(B) All written material, photographs, published material, and electronic media received by the commission shall be preserved and, along with a record of all oral comments made at any public hearing, shall become an element of the record of rulemaking.

(C) Any person who considers himself or herself injured in his or her person, business, or property by final agency action under this section shall be entitled to judicial review of the action under this section.

(3)(A) If, in response to comments, the commission amends a proposed regulation to the extent that the rule would have an effect not previously expressed in the notice required by subdivision (d)(1) of this section, the commission shall provide another adequate public notice.

(B) Subdivision (d)(3)(A) of this section shall not, however, require a second public notice if the final regulation is a logical outgrowth of the regulation proposed in the prior notice.

(4) The commission shall compile and maintain a record of rulemaking that shall contain:

(A)(i) A copy of all notices described in this subsection and a concise general statement of the basis and purpose of the proposed rule, which shall include a written explanation of the necessity of the regulation and a demonstration that any technical regulation or technical standard is based on generally accepted scientific knowledge and engineering practices.

(ii) For any standard or regulation that is identical to a regulation promulgated by the United States Environmental Protection Agency, this portion of the record may be satisfied by reference to the Code of Federal Regulations.

(iii) In all other cases, the department must provide its own justification with appropriate references to the scientific and engineering literature or written studies conducted by the department;

(B) Copies of all written material, photographs, published materials, electronic media, and the record of all oral comments received by the commission during the public comment period and hearings; and

(C) A responsive summary that groups public comments into similar categories and explains why the commission accepted or rejected the rationale of each category.

(5)(A) The decisions of the commission with regard to this section are final and may be judicially appealed to the appropriate circuit court as provided in § 8-4-222 within thirty (30) days after filing with the office of the Secretary of State by persons that have standing as set out in subdivision (d)(2) of this section.

(B) The record for review shall consist of a copy of the regulation and the record of rulemaking described in subdivision (d)(4) of this section.

(C) Rule changes, suspensions, or moratoria on types of categories of permits adopted by the commission shall be stayed and not take effect during the pendency of the appeal, except as specified in subsection (e) of this section.

(e)(1) If the commission determines that imminent peril to the public health, safety, or welfare requires immediate change in the rules or immediate suspension or moratorium on categories or types of permits, it may, after documenting the facts and reasons, declare an emergency and implement emergency rules, regulations, suspensions, or moratoria.

(2) No rule, regulation, suspension, or moratorium adopted under an emergency declaration shall be effective for longer than one hundred eighty (180) days.

(3) The imminent loss of federal funding, certification, or authorization for any program administered by the department shall establish a prima facie case of imminent peril to the public health, safety, or welfare.

History. Acts 1949, No. 472, [Part 1], § 3; 1961, No. 120, § 5; 1973, No. 262, § 4; A.S.A. 1947, § 82-1904; Acts 1993, No. 163, § 12; 1993, No. 165, § 12; 1997, No. 314, § 1; 1997, No. 1219, § 5; 2011, No. 195, § 1; 2013, No. 954, § 2; 2013 (1st Ex. Sess.), No. 4, § 1.

A.C.R.C. Notes. Acts 2013, No. 954, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) Under current interpretations by the United States Environmental Protection Agency, the development, implementation, and assessment of water quality standards required under the Clean Water Act, 33 U.S.C. § 1251 et seq., are to be based on sound scientific and statistical principles, among other things, and should consider readily available data that is consistent with and relevant to the water use to be maintained;

"(2) Federal law requires the consideration of certain relevant factors, including natural variability and statistical variability over periods of time that are relevant to the water use to be maintained;

"(3) After consideration of readily available data, reliance on data that is not significant or meaningful, is incomplete, is not indicative of conditions relevant to the water use to be maintained, is speculative, is inconclusive or reasonably supportive of different conclusions, or is otherwise not well-suited to the purpose for which it is being used, has the potential to lead to unnecessary regulation and the inefficient use and allocation of scarce resources;

"(4) The State of Arkansas has a well-developed and long-standing program of sampling the quality of waters subject to various uses;

"(5) There is a rational basis found in sound scientific and statistical principles for using long-term averages in assessing mineral concentrations in a stream;

"(6) The Arkansas Department of Environmental Quality's analysis of data from Arkansas streams demonstrates that four cubic feet per second (4 ft³/s) is the median flow for small streams, which makes this measure an appropriate indicator for stream flow when long-term flow data is

not available, thereby avoiding unnecessary regulation and the inefficient use of state resources;

“(7) It is appropriate and consistent with sound scientific and statistical principles to use the greater of long-term average flows or four cubic feet per second (4 ft³/s) for assessing mineral concentrations in streams; and

“(8) Because of the existing technological and economic limits on treatability of dissolved minerals and the likely localized economic impacts of the treatability requirement, it is an inefficient use of scarce resources to apply domestic water supply uses and criteria to streams, stream segments, or other bodies of water that do not have an existing domestic water supply use or that do not have a demonstrated and reasonable potential to be used as a domestic water supply source.

“(b) The intent of this act is to:

“(1) Provide for the consideration of existing and readily available data and information relevant to the development, implementation, and assessment of water quality standards for minerals;

“(2) Provide standards for determining the data that should be considered and relied on by the State of Arkansas and its agencies for the development, implementation, and assessment of water quality standards for minerals; and

“(3) Direct state agencies to support the development, implementation, and assessment of water quality standards according to the provisions of this act.”

Amendments. The 2013 amendment rewrote (b)(3).

The 2013 (1st Ex. Sess.) amendment rewrote (b)(3).

8-4-203. Permits generally — Definitions.

(a) The Arkansas Department of Environmental Quality or its successor is given and charged with the power and duty to issue, continue in effect, revoke, modify, or deny permits, under such conditions as it may prescribe:

(1) To prevent, control, or abate pollution;

(2) For the discharge of sewage, industrial waste, or other wastes into the waters of the state, including the disposal of pollutants into wells; and

(3) For the installation, modification, or operation of disposal systems or any part of them.

(b)(1)(A) The department shall not issue, modify, renew, or transfer a National Pollutant Discharge Elimination System permit or state permit for a nonmunicipal domestic sewage treatment works without the permit applicant first:

(i) Paying the trust fund contribution fee required under subdivision (b)(4) of this section;

(ii) Submitting the assessment required by subdivision (b)(1)(D) of this section; and

(iii) Certifying that the permit applicant has complied with applicable local ordinances and regulations, including without limitation:

(a) Local zoning ordinances;

(b) Local planning authority regulations; and

(c) Local permitting requirements.

(B) As used in this section, “nonmunicipal domestic sewage treatment works” means a device or system operated by an entity other than a city, town, or county that treats, in whole or in part, waste or wastewater from humans or household operations and must continuously operate to protect human health and the environment despite a permittee’s failure to maintain or operate the device or system.

(C) The following are specifically exempted from the requirements of this subsection:

- (i) State or federal facilities;
- (ii) Schools;
- (iii) Universities and colleges;
- (iv) Entities that continuously operate due to a connection with a city, town, or county; and
- (v) A commercial or industrial entity that treats domestic sewage from its operations and does not accept domestic sewage from other entities or residences.

(D) Each application for the initial permit and any subsequent permit renewal, modification, or transfer for a nonmunicipal domestic sewage treatment works submitted under this section shall be accompanied by an assessment developed by a professional engineer licensed by the state that includes:

- (i) A cost estimate for a third party to operate and maintain the nonmunicipal domestic sewage treatment works for five (5) years;
- (ii) A list of all necessary capital expenditures, system upgrades, or significant repairs and a milestone schedule for completion within five (5) years; and
- (iii) A financial plan that demonstrates to the department's satisfaction the permittee's financial ability to operate and maintain the nonmunicipal domestic sewage treatment works each year for five (5) years.

(E)(i) Except as provided under subdivision (b)(1)(E)(ii) of this section, the department shall not issue, renew, or transfer permit coverage for nonmunicipal domestic sewage treatment works to property owners' associations or homeowners' associations after January 1, 2018.

(ii) A property owners' association or homeowners' association with permit coverage before December 31, 2017, may retain permit coverage if the property owners' association or homeowners' association complies with this section.

(2) Until January 1, 2016, the department may reduce or waive the amount of the required financial assurance if the permit applicant can demonstrate to the department's satisfaction that:

(A) For a renewal permit, during the five (5) years preceding the application for a renewal permit, the nonmunicipal domestic sewage treatment works has:

- (i) Maintained the nonmunicipal domestic sewage treatment works in continuous operation;
- (ii) Maintained the nonmunicipal domestic sewage treatment works in substantial compliance with the existing discharge permit issued by the department, which shall be demonstrated by submitting the following:

- (a) All discharge monitoring reports;
- (b) Evidence that the nonmunicipal domestic sewage treatment works has not exceeded the same permit effluent criteria in any two

(2) consecutive monitoring periods during the previous three (3) years;

(c) Evidence that no more than ten percent (10%) of the nonmunicipal domestic sewage treatment works' submitted discharge monitoring reports show effluent violations; and

(d) Evidence that there have not been any administrative or judicial orders entered against the owner or operator for violations of state or federal environmental laws, rules, or regulations or permits issued by the department;

(iii) Maintained the services of a certified wastewater treatment operator, where applicable;

(iv)(a) Remained financially solvent, which shall be demonstrated by either:

(1) The nonmunicipal domestic sewage treatment works' federal tax returns for the five (5) years preceding the application for a renewal permit and a sworn affidavit from a corporate official or other responsible official representing the nonmunicipal domestic sewage treatment works that lists all assets and liabilities for the nonmunicipal domestic sewage treatment works; or

(2) An independent certified public accountant's report on the owner's or operator's independently reviewed financial statements.

(b) The review of financial statements under subdivision (b)(2)(A)(iv)(a)(2) of this section shall be conducted in accordance with the American Institute of Certified Public Accountants' Professional Standards, as they existed on January 1, 2013; and

(v) Operated the nonmunicipal domestic sewage treatment works to prevent the discharge of waterborne pollutants in unacceptable concentrations to the surface waters or groundwater of the state as defined in the permit or as defined in the state's water quality standards; or

(B) For a new permit:

(i) The reduction or waiver is necessary to accommodate important economic or social development in the area of the proposed nonmunicipal domestic sewage treatment works; and

(ii) The applicant has shown a history of financial responsibility and compliance with regulatory requirements.

(3) The department may withdraw a reduction or waiver granted under this subsection at any time if the permittee has a permit violation in three (3) or more consecutive discharge monitoring periods.

(4)(A) A permittee shall pay the trust fund contribution fee determined by the department under this subdivision (b)(4) to the department.

(B)(i) The department shall determine the required initial and annual trust fund contribution fees for each nonmunicipal domestic sewage treatment works based on each nonmunicipal domestic sewage treatment works' design treatment capacity according to the National Pollutant Discharge Elimination System permit or the state permit and existing and projected number of residential end users.

(ii)(a) The department shall require an initial trust fund contribution fee for each construction permit for a new nonmunicipal domestic sewage treatment works or any modification to an existing nonmunicipal domestic sewage treatment works resulting in an increase in design treatment capacity according to the National Pollutant Discharge Elimination System permit or the state permit.

(b) The initial trust fund contribution fee required by the department for a new nonmunicipal domestic sewage treatment works is ten percent (10%) of the estimated cost of construction of the new nonmunicipal domestic sewage treatment works as certified by the engineer of record.

(c) The initial trust fund contribution fee required by the department for modifications to existing nonmunicipal domestic sewage treatment works is ten percent (10%) of the estimated cost of construction for the modification of the nonmunicipal domestic sewage treatment works as certified by the engineer of record.

(d) The department shall reduce the initial trust fund contribution fee if:

(1) The nonmunicipal domestic sewage treatment works is subject to an enforcement action; and

(2) The corrective actions approved by the department would require the nonmunicipal domestic sewage treatment works to make an initial trust fund contribution.

(e) The department shall not require an initial trust fund contribution fee if the design treatment capacity according to the National Pollutant Discharge Elimination System permit or the state permit is not increased.

(iii) The annual trust fund contribution fee required by the department shall not exceed one thousand dollars (\$1,000) per year for no-discharge permits or five thousand dollars (\$5,000) per year for discharge permits.

(iv)(a) Except as otherwise provided in this subsection, a nonmunicipal domestic sewage treatment works may apply for reimbursement for a maximum of fifty percent (50%) of the costs for capital expenditures necessary to maintain permit compliance made to the nonmunicipal domestic sewage treatment facility in the previous five (5) years if:

(1) Funding is available and appropriated; and

(2) The department has issued that nonmunicipal domestic sewage treatment facility's third permit renewal following its initial trust fund contribution.

(b) Applications for reimbursement under this subdivision (b)(4)(B) shall include a statement certified by a professional engineer licensed by the State of Arkansas identifying the necessary capital costs expended.

(v) Reimbursements from the Nonmunicipal Domestic Sewage Treatment Works Trust Fund are subject to the following restrictions:

(a) Over the lifetime of a nonmunicipal domestic sewage treatment facility, the reimbursement to a nonmunicipal domestic sewage

treatment works shall not exceed seventy-five percent (75%) of that nonmunicipal domestic sewage treatment facility's initial trust fund contribution fee;

(b) If the Director of the Arkansas Department of Environmental Quality determines that a nonmunicipal domestic sewage treatment works is in a state of chronic noncompliance, that nonmunicipal domestic sewage treatment works shall not receive reimbursement from the Nonmunicipal Domestic Sewage Treatment Works Trust Fund; and

(c) The department shall reimburse a nonmunicipal domestic sewage treatment works based on a pro rata share of each submitted request compared to the total remaining funding available if there are insufficient moneys available in a fiscal year to make reimbursements for all submitted requests under this subsection after:

(1) Deducting the moneys required to make payments to third-party contractors hired by the department from the fund;

(2) Calculating the total remaining funding available; and

(3) Allocating the moneys available for reimbursement to each applicant for reimbursement.

(vi) The Arkansas Pollution Control and Ecology Commission may promulgate regulations to implement this subsection.

(C) The trust fund contribution fee required under this subdivision (b)(4):

(i) May be collected in conjunction with any other permit fees;

(ii) Shall be paid before a permit is issued or renewed; and

(iii) Shall be deposited into the fund.

(D) If the total amount in the fund equals or exceeds two million one hundred thousand dollars (\$2,100,000), additional trust fund contribution fees shall not be collected by the department until the total amount of the fund equals or is less than one million five hundred thousand dollars (\$1,500,000), at which time the collection of required trust fund contribution fees shall resume.

(5)(A) A permittee is responsible for ensuring that the required trust fund contribution fee is received by the department by the due date determined by the department.

(B) If the department does not timely receive the required trust fund contribution fees for a nonmunicipal domestic sewage treatment works, the department may initiate procedures to suspend or revoke the permit under which the nonmunicipal domestic sewage treatment works is operated.

(C) A permit applicant's or permit transfer applicant's failure to pay the required trust fund contribution fee assessed by the department under this section is:

(i) Grounds for denying the permit or the permit transfer; and

(ii) A violation of this chapter and subjects the applicant to the penalties described in § 8-4-103.

(6) Sanctions for violating this subsection may include without limitation civil penalties and suspension or revocation of a permit.

(7) The department may seek cost recovery from an owner or operator and reimbursement to the fund of any moneys expended under this section, including without limitation the institution of a civil action against the owner or operator.

(8) The department shall not directly operate or be responsible for the operation of a nonmunicipal domestic sewage treatment works.

(9)(A) The director or the director's designee may send a signed statement to each water service provider that serves all or a portion of the service area of a nonmunicipal domestic sewage treatment works certifying that the director finds that the nonmunicipal domestic sewage treatment works:

- (i) Is the subject of an enforcement action by the department;
- (ii) Has not complied with the requirements of this section, including payment of the nonmunicipal domestic sewage treatment works trust fund contribution; or
- (iii) Otherwise failed to comply with its permit.

(B) The department shall include a legal description of the service area for the nonmunicipal domestic sewage treatment works with the signed statement under subdivision (b)(9)(A) of this section.

(C) Upon receipt of a signed statement that includes a legal description of the service area for the nonmunicipal domestic sewage treatment works, the water service provider shall not establish new connections or initiate service to existing connections for water service in the service area of the nonmunicipal domestic sewage treatment works as defined by the legal description.

(D) If the director or the director's designated representative finds that the nonmunicipal domestic sewage treatment works is no longer subject to an enforcement action or has remedied the noncompliance that formed the basis for the signed statement under subdivision (b)(9)(A) of this section, the director or the director's designated representative shall send a signed statement of the finding to each water service provider that received the prior statement.

(E) Upon receipt of the signed statement required under subdivision (b)(9)(D) of this section, the water service provider may resume installation of new connections or resume initiation of service to existing connections for water service.

(c)(1)(A)(i) All facilities that engage in land application or storage of fluids generated or utilized during exploration or production phases of oil or gas operations shall be closed in a manner that ensures protection of human health and the environment.

(ii) As used in this subsection, "land application or storage of fluids generated or utilized during exploration or production phases of oil or gas operations" means land farming through the controlled and repeated application of drilling fluids to a soil surface or the practice of receiving and storing said fluids from offsite for waste management.

(iii) Surface facilities associated with Class II injection wells are specifically excluded from the requirements of this subsection.

(iv) Land applications at the drilling or exploration site that are authorized under any general permit issued by the department are excluded from the requirements of this subsection.

(B) By October 1, 2009, each existing permitted facility regulated under this subsection shall submit to the department the following:

(i) A plan to close the permitted facility and make any site restoration deemed necessary by the department;

(ii) A detailed cost estimate to close and restore the permitted facility that meets the requirements of this subsection and is approved by the department; and

(iii) A financial mechanism that demonstrates to the department's satisfaction the permittee's financial ability to ensure adequate closure and any necessary restoration of the permitted facility in accordance with the requirements of this subsection.

(C) The department shall not issue, modify, or renew a permit for facilities regulated under this subsection without the permit applicant first demonstrating to the department's satisfaction the applicant's financial ability to ensure adequate closure and any necessary restoration of the permitted facility in accordance with the requirements of this subsection.

(D)(i) The amount of any financial assurance required under this subsection shall be equal to or greater than the detailed cost estimate for a third party to close the permitted facility in accordance with closure plans approved by the department.

(ii) The detailed cost estimate shall be prepared by an independent professional consultant.

(iii) On or before August 15 of each year, a permittee shall submit to the department for approval a detailed cost estimate to close and restore the permitted facility in accordance with closure plans that have been approved by the department.

(E)(i) For new permits, the applicant shall submit to the department for approval a detailed cost estimate to close and restore the facility based on the proposed operation and capacity of the facility from the date the permit is issued through the following October 1.

(ii) For renewal or modification applications, the permittee shall submit to the department for approval a detailed cost estimate to close and restore the permitted facility based on closure plans that have been approved by the department.

(F)(i) For each permit, the financial assurance mechanism shall be renewed on October 1 of each year.

(ii) For each permit, documentation that the required financial assurance mechanism has been renewed beginning October 1 of that year shall be received by the department by September 15 of each year or the department shall initiate procedures to:

(a) Take possession of the funds guaranteed by the financial assurance mechanism; and

(b)(1) Suspend or revoke the permit under which the facility is operated.

(2) A permit shall remain suspended until a financial assurance mechanism is provided to the department in accordance with this subsection.

(iii) The permittee is responsible for ensuring that documentation of annual renewal is received by the department by its due date.

(2) The permittee or applicant shall demonstrate financial ability to adequately close or restore the land application or storage facility by:

(A) Obtaining insurance that specifically covers closure and restoration costs;

(B) Obtaining a letter of credit;

(C) Obtaining a bond or other surety instrument;

(D) Creating a trust fund or an escrow account;

(E) Combining any of the instruments in subdivisions (c)(2)(A)-(D) of this section; or

(F) Any other financial instrument approved by the director.

(3) A financial instrument required by this subsection shall:

(A) Be posted to the benefit of the department;

(B) Provide that the financial instrument cannot be canceled without sixty (60) days' prior written notice addressed to the department's legal division chief as evidenced by a signed, certified mail with a return receipt request; and

(C) Be reviewed by the department upon receipt of the cancellation notice to determine whether to initiate procedures to revoke or suspend the facility's permit and whether to initiate procedures to take possession of the funds guaranteed by the financial assurance mechanism.

(4) Before the department may release a financial assurance mechanism, the department shall receive a certification by a professional engineer that the permitted facility has been closed and restored in accordance with closure plans that have been approved by the department.

(5) The department is not responsible for the operation, closure, or restoration of a facility regulated under this subsection.

(d)(1) When an application for the issuance of a new permit or a major modification of an existing permit is filed with the department, the department shall cause notice of the application to be published in a newspaper of general circulation in the county in which the proposed facility is to be located.

(2) The notice required by subdivision (d)(1) of this section shall advise that any interested person may request a public hearing on the permit application by giving the department a written request within ten (10) days of the publication of the notice.

(3)(A) If the department determines that a hearing is necessary or desires such a hearing, the department shall schedule a public hearing.

(B)(i) If the department schedules a public hearing, the department shall notify the applicant and all persons who have submitted comments of the date, time, and place of the public hearing.

(ii) The notice shall be provided using one (1) of the following methods based on the contact information available for the applicant or the person and the director's discretion:

(a) First class mail; or

(b) Email.

(e)(1)(A) Whenever the department proposes to grant or deny any permit application, it shall cause notice of its proposed action to be published in either:

(i) A newspaper of general circulation in the county in which the facility that is the subject of the application is located; or

(ii) In the case of a statewide permit, in a newspaper of general circulation in the state.

(B) The notice shall afford any interested party thirty (30) calendar days in which to submit comments on the proposed permit action.

(C)(i) At the conclusion of the public comment period, the department shall provide a final written permitting decision regarding the permit application.

(ii) The final written permitting decision shall be published on the department's website.

(iii) The department shall provide the applicant the final permitting decision using one (1) of the following methods based on the contact information available and the director's discretion:

(a) First class mail; or

(b) Email.

(iv) The department shall provide notice of the final permitting decision to all persons who have submitted comments using one (1) of the following methods based on the contact information available and the director's discretion:

(a) First class mail; or

(b) Email.

(2)(A)(i) The department's final decision shall include a response to each issue raised in any public comments received during the public comment period. The response shall manifest reasoned consideration of the issues raised by the public comments and shall be supported by appropriate legal, scientific, or practical reasons for accepting or rejecting the substance of the comment in the department's permitting decision.

(ii) For the purposes of this section, response to comments by the department should serve the roles of both developing the record for possible judicial review of an individual permitting action and as a record for the public's review of the department's technical and legal interpretations on long-range regulatory issues.

(iii) Nothing in this section, however, shall be construed as limiting the department's authority to raise all relevant issues of regulatory concern upon adjudicatory review of the commission of a particular permitting action.

(B)(i) In the case of any discharge limit, emission limit, environmental standard, analytical method, or monitoring requirements, the

record of the proposed action and the response shall include a written explanation of the rationale for the proposal, demonstrating that any technical requirements or standards are based upon generally accepted scientific knowledge and engineering practices.

(ii) For any standard or requirement that is identical to an applicable regulation, this demonstration may be satisfied by reference to the regulation. In all other cases, the department must provide its own justification with appropriate reference to the scientific and engineering literature or written studies conducted by the department.

(f)(1) All costs of publication of notices of applications and notices of proposals to grant permits under this section shall be the responsibility of the applicant.

(2) All costs of publication of notices of proposals to deny a permit under this section shall be the responsibility of the department.

(3) Any moneys received under this subsection shall be classified as refunds to expenditures.

(g) Only those persons that submit comments on the record during the public comment period and the applicant shall have standing to appeal the decision of the department to the commission.

(h)(1) Permits for the discharge of pollutants into the waters of the state or for the prevention of pollution of the waters of the state shall remain freely transferable if the applicant for the transfer:

(A) Notifies the director at least thirty (30) days in advance of the proposed transfer date;

(B) Submits a disclosure statement as required under § 8-1-106;

(C) Provides any replacement financial assurance required under this section; and

(D) Ensures that all past and currently due annual permit fees and the trust fund contribution fees for the nonmunicipal domestic sewage treatment works have been paid.

(2) Only the reasons stated in §§ 8-1-103(4), 8-1-106(b)(1), 8-1-106(c), and this section constitute grounds for denial of a transfer.

(3) The permit is automatically transferred to the new permittee unless the director denies the request within thirty (30) days of the receipt of the disclosure statement.

(i) In the event of voluminous comments, including without limitation a petition, the department may require the designation of a representative to accept any notices required by this section.

(j) The notice provisions of subsections (d) and (e) of this section do not apply to permit transfers or minor modifications of existing permits.

(k) This section in no way restricts local and county government entities from enacting more stringent ordinances regulating nonmunicipal domestic treatment sewage systems in Arkansas.

(l) The commission may promulgate rules to establish a permit-by-rule. A permit-by-rule is subject to the public notice requirements and procedural provisions under § 8-4-202 et seq. but is not subject to the public notice requirements and procedural provisions under this section and §§ 8-4-204 and 8-4-205.

(m)(1)(A)(i) The department may issue general permits under subsection (a) of this section.

(ii) A general permit is a statewide permit for a category of facilities or sources that:

(a) Involve the same or substantially similar types of operations or activities;

(b) Discharge or release the same type of wastes or engage in the same type of disposal practices;

(c) Require the same limitations, operating conditions, or standards;

(d) Require the same or similar monitoring requirements; and

(e) In the opinion of the director, may be regulated under a general permit.

(B)(i) Facilities or sources eligible to construct or operate under a general permit may obtain coverage by submitting a notice of intent to the department.

(ii) The director may require a person who has been granted coverage under a general permit to apply for and obtain an individual permit.

(2)(A) A general permit is subject to the public notice requirements for statewide permits and the procedures under subsection (e) of this section.

(B) The department shall pay the costs of publication of notice of a draft permitting decision to issue a general permit.

(C) General permit coverage is not transferable unless the general permit provides for transfer.

(3)(A)(i) Before the submittal to public comment of a general permit that has not been previously issued, the department shall consider the economic impact and environmental benefit of the general permit and its terms and conditions upon the people of the State of Arkansas, including those entities that may apply for coverage under the general permit.

(ii) This requirement does not apply to general permits or terms or conditions that adopt the language of state or federal statutes or regulations without substantive change.

(B) If the terms and conditions of a previously issued general permit are revised upon renewal, the economic impact and environmental benefit of only the proposed changes shall be considered.

(C) A general permit for which costs are specifically prohibited from being considered by state or federal law or regulation is exempt from the requirements of this subsection.

(D) The department may rely upon readily available information for its consideration of the economic impact and environmental benefit of the general permit and its terms and conditions.

(4)(A) Only those persons that submit comments on the record during the public comment period shall have standing to appeal the decision of the department to the commission.

(B) The final permitting decision of the department on the general permit is subject to a hearing before the commission under §§ 8-4-

205, 8-4-212, 8-4-213, 8-4-214, and the administrative procedures promulgated by the commission.

(5)(A)(i) When a general permit includes an expiration date later than July 1, 2012, the department shall publish the notice of intent to renew or not renew the general permit at least three hundred sixty-five (365) days before the expiration of the general permit.

(ii) When a general permit includes an expiration date earlier than July 1, 2012, the department shall publish the notice of intent to renew or not renew the general permit as soon as reasonably possible.

(B) The department shall publish its final permitting decision to renew or not renew the general permit at least one hundred eighty (180) days before the expiration date of the general permit.

(C) If the general permit expires before the final decision to renew or not renew the general permit, the terms and conditions of the general permit shall remain in effect, and all persons who obtained coverage under the general permit before its expiration shall retain coverage under the general permit until there has been a final permit decision on the general permit.

(D) In the event the department makes a decision to not renew the general permit, existing coverage under the general permit shall continue under the terms of the expired permit until a final decision is reached for an individual permit.

(6)(A) If a general permit is appealed and the general permit expires before the final decision by the director or by the commission to renew or not renew the general permit, the terms and conditions of the general permit shall remain in effect.

(B) All persons who obtained coverage under the general permit before its expiration shall retain coverage under the general permit until there has been a final administrative decision on the general permit.

(C) The director shall not approve new coverage under an expired general permit for any facility for which a notice of intent was not filed before expiration of the general permit.

(n)(1) When an application for the issuance of a new permit for a liquid animal waste system or a modification of an existing permit for a liquid animal waste system is filed, the department shall give notice of its proposed action in accordance with subdivision (e)(1)(A) of this section within one hundred twenty (120) days of receipt of the application.

(2)(A) At the conclusion of the public comment period, the department shall announce in writing within sixty (60) days its final decision regarding the permit application in accordance with subdivision (e)(2)(A) of this section.

(B) For a modification that the department considers to be minor in nature, the department shall make its final decision regarding the permit application within thirty (30) days after receipt of the application.

(3) An applicant may waive in writing to the department the timeliness requirement under subdivisions (n)(1) and (2) of this section.

(o)(1) If an application for modification of an existing state permit for a liquid animal waste management system is filed with the department, only those permit conditions subject to the modification are open for review.

(2)(A) Except as provided in subdivision (o)(2)(B) of this section, an existing state permit for a liquid animal waste management system that is in good standing is not subject to review or third-party appeal for siting or location issues that were not raised during the applicable review or appeal period at the time of permit issuance.

(B) Subdivision (o)(2)(A) of this section does not limit the authority of the department to address or enforce a violation of permit conditions or applicable law.

History. Acts 1949, No. 472, [Part 1], § 3; 1961, No. 120, § 4; 1975, No. 743, § 4; 1979, No. 680, § 1; 1981, No. 826, § 1; A.S.A. 1947, § 82-1904; Acts 1993, No. 163, § 13; 1993, No. 165, § 13; 1995, No. 384, §§ 2, 3, 6-9; 1995, No. 895, § 2; 1997, No. 1219, § 5; 1997, No. 1312, § 1; 1999, No. 229, § 1; 1999, No. 1164, § 20; 2007, No. 832, § 1; 2007, No. 1005, § 2; 2009, No. 369, § 1; 2009, No. 409, § 1; 2011, No. 731, § 1; 2013, No. 402, §§ 1, 2; 2013, No. 1127, § 2; 2015, No. 94, § 1; 2015, No. 575, §§ 2, 3; 2017, No. 501, § 1; 2017, No. 987, §§ 1-3; 2017, No. 1037, § 1; 2017, No. 1057, §§ 1, 2; 2018 (2nd Ex. Sess.), No. 6, § 1; 2018 (2nd Ex. Sess.), No. 10, § 1.

A.C.R.C. Notes. Acts 2013, No. 1127, § 7, provided: "The enactment and adoption of this act shall not repeal, expressly or impliedly, the acts passed at the regular session of the Eighty-Ninth General Assembly. All such acts shall have the full force and effect and, so far as those acts intentionally vary from or conflict with any provision contained in this act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas Code of 1987."

Pursuant to Acts 2013, No. 1127, § 7, the amendment to this section by Acts 2013, No. 1127, § 2, is superseded by the amendments to this section by Acts 2013, No. 402, § 1.

Acts 2015, No. 575, § 1, provided: "Legislative findings. The General Assembly finds that:

"(1) The existing financial assurance requirements for nonmunicipal domestic sewage treatment works that are in place to ensure that funding is available to

properly operate these sewage treatment systems for the permitted term can create hardships for those facilities that cannot secure readily available and affordable financial assurance mechanisms;

"(2) In lieu of each permit applicant and each owner or operator of a nonmunicipal domestic sewage treatment works providing individual financial assurance to the Arkansas Department of Environmental Quality, the need for financial assurance for nonmunicipal domestic sewage treatment facilities may be met through the creation of a trust fund to be funded jointly by the nonmunicipal domestic wastewater treatment facilities permitted to operate in Arkansas; and

"(3) The total funding for the trust fund is anticipated to be approximately ten percent (10%) of the total amount currently required to be assured by individual permittees."

Acts 2015, No. 575, § 2, omitted the word "works" at the end of former subdivision (b)(12) of this section.

Publisher's Notes. Acts 2015, No. 575, § 2 specifically amended subsection (b) of this section as amended by Acts 2015, No. 94.

Amendments. The 2013 amendment by No. 402 substituted "renew, or transfer" for "or renew" in (b)(1)(A)(i) and (b)(1)(B)(i); in (b)(1)(A)(ii), substituted "As used in" for "For purposes of," deleted "borough" following "city, town," and substituted "device or system" for "treatment works"; added (b)(1)(A)(v); inserted present (b)(3) through (b)(9) and redesignated and rewrote the remaining subdivisions accordingly; and rewrote (h).

The 2013 amendment by No. 1127 inserted "nonmunicipal domestic sewage" in (b)(1)(A)(ii).

The 2015 amendment by No. 94 rewrote (b)(10)(A)(iv)(a); substituted “review” for “examination” in (b)(10)(A)(iv)(b); transferred designation (b)(10)(B)(i) from the beginning of (b)(10)(B) to its present location; and substituted “works” for “works’s” in (b)(10)(A)(ii)(c) [subdivision (b)(10) is now (b)(2)].

The 2015 amendment by No. 575 redesignated former (b)(1)(A)(i), (ii), and (iii) as (b)(1)(A), (B), and (C) and deleted former (b)(1)(A)(iv) and (b)(1)(A)(v); substituted “paying the trust fund contribution fee required under subdivision (b)(2) of this section” for “demonstrating to the department its financial ability to cover the estimated costs of operating and maintaining the nonmunicipal domestic sewage treatment works for a minimum period of five (5) years” in present (b)(1)(A); substituted “The following” for “State or federal facilities, schools, universities, and colleges” in present (b)(1)(C) and added present (b)(1)(C)(i), (ii), (iii), and (iv); deleted former (b)(2) through (b)(9) and redesignated former (b)(10) and (b)(11) as (b)(2) and (b)(3); added “Until January 1, 2016” at the beginning of present (b)(2); substituted “if the permittee ... monitoring periods” for “in order to protect human health or the environment” in present (b)(3); added (b)(4) through (b)(7); redesignated former (b)(12) as (b)(8); added (h)(1)(D); deleted “subdivision (b)(9) of” preceding “this section” in (h)(2); and updated an internal reference.

The 2017 amendment by No. 501 added (n).

The 2017 amendment by No. 987 redesignated former (b)(1)(A) as present (b)(1)(A) and (b)(1)(A)(i); substituted “subdivision (b)(4)” for “subdivision (b)(2)” in

present (b)(1)(A)(i); added (b)(1)(A)(ii); substituted “town, or county” for “town, county, or sewer improvement district” in (b)(1)(B) and (b)(1)(C)(iv); substituted “this subsection” for “this section” in the introductory language of (b)(1)(C); added (b)(1)(C)(v), (b)(1)(D), and (b)(1)(E); substituted “design treatment capacity according to the National Pollutant Discharge Elimination System permit or the state permit” for “actual flow” in (b)(4)(B)(i); inserted present (b)(4)(B)(ii) and redesignated former (b)(4)(B)(ii) accordingly; in present (b)(4)(B)(iii), substituted “The annual” for “However, the”, “one thousand dollars (\$1,000)” for “two hundred dollars (\$200)”, and “five thousand dollars (\$5,000)” for “one thousand dollars (\$1,000)”; added (b)(4)(B)(iv)–(vi); added (b)(9); and made stylistic changes.

The 2017 amendment by No. 1037 redesignated a portion of former (b)(1)(A) as present (b)(1)(A)(i); substituted “subdivision (b)(4)” for “subdivision (b)(2)” in present (b)(1)(A)(i); added (b)(1)(A)(iii); and made stylistic changes.

The 2017 amendment by No. 1057 redesignated former (d)(3) as (d)(3)(A) and (d)(3)(B)(i); in present (d)(3)(B)(i), inserted “If the department schedules a public hearing, the department” and deleted “by first class mail” following “notify”; added (d)(3)(B)(ii); redesignated former (e)(1)(C) as present (e)(1)(C)(i); substituted “provide a final written permitting decision” for “announce in writing its final decision” in (e)(1)(C)(i); added (e)(1)(C)(ii)–(e)(1)(C)(iv); and made stylistic changes.

The 2018 (2nd Ex. Sess.) amendment by identical acts Nos. 6 and 10 added (o).

Cross References. Permit fees for air, water, and solid waste pollution control activities, § 8-1-101 et seq.

CASE NOTES

ANALYSIS

In General.
Environmental Protection Agency.
Permit Conditions.

In General.

The Arkansas Pollution Control and Ecology Commission’s permit decisions are decisions the Arkansas Pollution Control and Ecology Commission is charged with administering pursuant to the police

powers of the state and this section. *Enviroclean, Inc. v. Ark. Pollution Control & Ecology Comm’n*, 314 Ark. 98, 858 S.W.2d 116 (1993).

As the agency charged with administering the Water and Air Pollution Control Act, the Arkansas Pollution Control and Ecology Commission is given authority to issue, modify, and revoke permits regulating the emission of air pollutants under this section and § 8-4-304. *Enviroclean, Inc. v. Ark. Pollution Control & Ecology*

Comm'n, 314 Ark. 98, 858 S.W.2d 116 (1993).

Environmental Protection Agency.

Environmental Protection Agency (EPA) was entitled to summary judgment, because EPA had authority to look at downstream effects, company failed to adequately demonstrate affected waters would be protected, and EPA's refusal to approve state's proposed water quality criteria on basis of incomplete information was not arbitrary or capricious. *El Dorado Chem. Co. v. United States EPA*, 763 F.3d 950 (8th Cir. 2014).

Permit Conditions.

Where a corporation with an incinerator permit transferred all of its stock to a second corporation, there was substantial evidence to support the Arkansas Pollution Control and Ecology Commission's conclusion that the first corporation thereby transferred its permitted facility to the second corporation, a transfer prohibited by the permit. *Enviroclean, Inc. v. Ark. Pollution Control & Ecology Comm'n*, 314 Ark. 98, 858 S.W.2d 116 (1993).

Cited: *Ark. Comm'n of Pollution Control & Ecology v. Husky Indus., Inc.*, 293 Ark. 249, 737 S.W.2d 157 (1987).

8-4-204. Permits — Revocation.

The Arkansas Department of Environmental Quality or its successor is given and charged with the power and duty to revoke, modify, or suspend, in whole or in part, for cause any permit issued under this chapter, including without limitation:

- (1) Violation of any condition of the permit;
- (2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or
- (3) A change in any applicable regulation or a change in any preexisting condition affecting the nature of the discharge that requires either a temporary or permanent reduction or elimination of the permitted discharge.

History. Acts 1949, No. 472, [Part 1], § 3; 1975, No. 743, § 4; A.S.A. 1947, § 82-1904; Acts 1993, No. 163, § 14; 1993, No.

165, § 14; 1997, No. 1219, § 5; 1999, No. 1164, § 21.

CASE NOTES

Violations.

Where a corporation with an incinerator permit transferred all of its stock to a second corporation, there was substantial evidence to support the Arkansas Pollution Control and Ecology Commission's conclusion that the first corporation thereby transferred its permitted facility to the second corporation, a transfer pro-

hibited by the permit. *Enviroclean, Inc. v. Ark. Pollution Control & Ecology Comm'n*, 314 Ark. 98, 858 S.W.2d 116 (1993).

Cited: *Ark. Comm'n of Pollution Control & Ecology v. Husky Indus., Inc.*, 293 Ark. 249, 737 S.W.2d 157 (1987); *Nucor Steel-Arkansas v. Ark. Pollution Control & Ecology Comm'n*, 2015 Ark. App. 703, 478 S.W.3d 232 (2015).

8-4-205. Permits — Hearings upon denial, revocation, or modification and other permit actions — Definition.

(a) Any person that is denied a permit by the Director of the Arkansas Department of Environmental Quality or that has a permit revoked or modified or a request for permit transfer or modification denied shall be afforded an opportunity for a hearing by the Arkansas Pollution Control and Ecology Commission in connection therewith,

upon written application made within thirty (30) days after service of notice of the denial, revocation, or modification.

(b)(1) Only those interested persons, other than the applicant, that have submitted comments on the record regarding a proposed permit action during the public comment period shall have standing to request a hearing by the commission in connection therewith, upon written application made within thirty (30) days after the date of the Arkansas Department of Environmental Quality's final decision regarding the permit action.

(2) No interested party requesting a hearing under this subsection may raise any issue in the hearing that was not raised in the public comments unless the party raising the issue shows good cause why such issue could not, with reasonable diligence, have been discovered and presented during the public comment period. The limitation in this subdivision (b)(2) shall not restrict the issues that may be addressed by the applicant in any appeal.

(3) A request for a hearing shall identify the permit action in question and its date and must include a complete and detailed statement identifying the legal and factual objections to the permit action.

(c)(1)(A) Within thirty (30) days of the date the request for a hearing is filed with the Secretary of the Arkansas Pollution and Ecology Control Commission, a preliminary hearing will be conducted in the name of the commission by the commission's authorized administrative law judge.

(B) Within a reasonable time after the preliminary hearing, the administrative law judge shall enter a written decision determining whether the parties qualify as proper parties under subdivision (b)(1) of this section and whether the request conforms with the requirements under subdivisions (b)(2) and (3) of this section.

(C) A party aggrieved by the decision entered under this subsection may, within ten (10) business days, request review by the commission.

(2)(A) A contested decision and any final recommended decision of the administrative law judge shall be transmitted to the commission.

(B) The commission shall consider the recommended decision of the administrative law judge and shall either affirm the decision in whole or in part or reverse the decision in whole or in part.

(3) At this preliminary hearing, the administrative law judge shall weigh the equities of any request for expedited review and advance the case on the administrative docket as circumstances permit.

(4) The commission shall review the director's decision de novo.

(5) The administrative law judge shall schedule the hearing and other proceedings so that the appeal will be submitted to the commission for final commission action within one hundred twenty (120) days after the preliminary hearing unless the parties mutually agree to a longer period of time or the administrative law judge establishes a longer period of time for just cause.

(6) During the pendency of the appeal to the commission:

(A) The denial of a permit shall stand;

(B) The issuance, modification, or revocation of a permit or that part of a permit that is the subject of the appeal shall be stayed;

(C)(i) Notwithstanding subdivisions (c)(6)(A) and (B) of this section, upon application by a party, the commission may provide for a stay, modify the terms of a stay, or terminate a stay under appropriate circumstances to avoid substantial prejudice to a party.

(ii) As used in subdivision (c)(6)(C)(i) of this section, “substantial prejudice” means that the following will occur to the party seeking a stay, a modification of the terms of a stay, or the termination of a stay if the request is denied:

(a) Actual harm to health; or

(b) Adverse economic impact, including without limitation interruption, curtailment, or deferral of business or increased cost of construction or operation;

(D) Upon application by a party for a stay, to modify the terms of a stay, or to terminate a stay, the Chair of the Arkansas Pollution and Ecology Control Commission shall:

(i) Grant a temporary stay, modify the terms of a stay, or terminate a stay effective until the earlier of the next regularly scheduled commission meeting or the next special meeting called for the purpose of considering the application; or

(ii) Place the application on the agenda for the next regularly scheduled commission meeting or call a special commission meeting for the purpose of considering the application if more than thirty (30) days will pass between the receipt of the application and the next regularly scheduled commission meeting; and

(E) Notwithstanding subdivision (c)(6)(D) of this section, the commission shall render a final decision on an application to provide for a stay, modify the terms of a stay, or terminate a stay within thirty (30) days of receipt of the application.

(7) The decision of the commission is final, and only those persons that are parties to the administrative appeal under this section shall have standing to appeal a permitting decision to circuit court as provided for in §§ 8-4-222 — 8-4-229.

History. Acts 1949, No. 472, [Part 1], § 5; 1973, No. 262, § 7; A.S.A. 1947, § 82-1906; Acts 1991, No. 744, § 4; 1993, No. 163, § 15; 1993, No. 165, § 15; 1995, No. 384, § 10; 1999, No. 1164, § 22; 2013, No. 1021, § 1; 2015, No. 838, § 4.

Amendments. The 2013 amendment added (c)(6)(C)(ii) through (E).

The 2015 amendment substituted “administrative law judge” for “hearing offi-

cer” throughout (c); and substituted “under” for “pursuant to” in (c)(1)(C).

Cross References. Administrative procedures and appeals in actions involving hazardous substances, § 8-7-506.

Hazardous substance remedial action trust fund, procedures for appeal, § 8-7-519.

CASE NOTES

ANALYSIS

Construction.
Public Comments.
Statement of Objections.

Construction.

The right to public participation in hearings before the Department of Pollution Control and Ecology under Arkansas law is comparable to 33 U.S.C. § 1319(g), especially in view of 40 C.F.R. § 123.27(d). *Ark. Wildlife Fed'n v. ICI Ams. Inc.*, 842 F. Supp. 1140 (E.D. Ark. 1993), *aff'd*, 29 F.3d 376 (8th Cir. 1994).

Public Comments.

In a case concerning a permit to operate a steel mill, an argument that an air quality analysis incorrectly employed Significant Impact Levels was procedurally barred by not having been raised in the

public comments, as required by this section. *Nucor Steel-Arkansas v. Ark. Pollution Control & Ecology Comm'n*, 2015 Ark. App. 703, 478 S.W.3d 232 (2015).

Statement of Objections.

Because the organizations' objections, that the contractor would not operate and maintain the facility for disposal of chemical weapons in compliance with the air and hazardous-waste permits and applicable law and the emergency response and contingency planning was inadequate, were not specifically mentioned, those claims were not properly raised for appellate review under subdivision (b)(3). *Pine Bluff for Safe Disposal v. Ark. Pollution Control & Ecology Comm'n*, 354 Ark. 563, 127 S.W.3d 509 (2003).

Cited: *Commission on Pollution Control & Ecology v. James*, 264 Ark. 144, 568 S.W.2d 27 (1978).

8-4-206. State water pollution control agency — General authority.

(a) In addition to any other powers which it may have under this chapter or any other legislative act, the Arkansas Department of Environmental Quality is authorized and empowered to act as the "state water pollution control agency" for the State of Arkansas for the purposes of the Federal Water Pollution Control Act Amendments of 1972.

(b) As the state water pollution control agency, the department may, among other things, approve projects for the construction of disposal systems for the purposes of loans and grants from the United States Environmental Protection Agency or any other federal agency and may take any other action necessary or appropriate to secure for the state the benefits of the Federal Water Pollution Control Act, as amended.

History. Acts 1949, No. 472, [Part 1], § 3; Acts 1973, No. 262, § 5; 1975, No. 743, § 5; A.S.A. 1947, § 82-1904; Acts 1999, No. 1164, § 23.

U.S. Code. The Federal Water Pollu-

tion Control Act Amendments of 1972, and the Federal Water Pollution Control Act, as amended, referred to in this section, are codified primarily as 33 U.S.C. § 1251 et seq.

8-4-207. State water pollution control agency — Powers and duties generally.

Without limiting the generality of the provisions of this chapter or of the powers which the Director of the Arkansas Department of Environmental Quality and the Arkansas Pollution Control and Ecology Commission may have under this or any other legislative act:

(1)(A) The director is authorized to require conditions in permits issued under this chapter regarding the achievement of effluent limitations based upon the application of such levels of treatment technology and processes as are required under the Federal Water Pollution Control Act, as amended, or any more stringent effluent limitations necessary to meet water quality criteria or toxic standards established pursuant to any state or federal law or regulation. Such effluent limitations shall be achieved in the shortest reasonable period of time consistent with state law and the Federal Water Pollution Control Act, as amended, and any regulations or guidelines promulgated thereunder.

(B) The director is further authorized to set and revise schedules of compliance and include such schedules within the terms and conditions of the permits and prescribe other terms and conditions for permits issued under this chapter to assure compliance with applicable state and federal effluent limitations and water quality criteria, including requirements concerning recording, reporting, monitoring, entry, inspection, and sampling as provided in this chapter and such other requirements as are consistent with the purposes of this chapter;

(2) The director shall not issue a permit under this chapter if the discharge of any term of the permit would violate the provisions of any federal law or rule or regulation promulgated thereunder, including the duration of such permit;

(3) Permits for publicly owned treatment works shall include as a condition for the permit that the permittee provide information to the director concerning new introductions of pollutants or substantial changes in the volume or character of pollutants, whether sewage, industrial waste, or other wastes are being introduced into such treatment works, and appropriate measures to establish and ensure compliance by industrial users with any system of user charges required under state or federal law or any regulations or guidelines promulgated thereunder;

(4) The director is authorized to apply and enforce toxic effluent standards and pretreatment standards against industrial users of publicly owned treatment works for the introduction into such treatment works of sewage, industrial wastes, or other wastes which interfere with, pass through, or otherwise are incompatible with such treatment works;

(5) The director and the commission shall ensure public notice, public participation, and an opportunity for public hearing in respect to National Pollutant Discharge Elimination System permit applications and actions related to them in accordance with applicable state and federal law and rules and regulations; and

(6)(A)(i) Any records, reports, or information obtained under this chapter and any permits, permit applications, and related documentation shall be available to the public for inspection and copying.

(ii) However, information submitted to the Arkansas Department of Environmental Quality may be claimed as confidential if its disclosure would divulge trade secrets.

(B) The department shall deny any claim for confidentiality for the name and address of any permit applicant or permittee or for any National Pollutant Discharge Elimination System permit applications, National Pollutant Discharge Elimination System permits, and effluent data.

(C) Information required by National Pollutant Discharge Elimination System application forms, including any information submitted on the forms themselves and any attachments used to supply information required by the forms, shall not be claimed confidential nor afforded this protection.

(D) Any person adversely affected by a determination by the department on a claim of confidentiality may appeal the determination as provided in §§ 8-4-222 and 8-4-223.

History. Acts 1949, No. 472, [Part 1], § 3; 1973, No. 262, § 5; 1975, No. 743, § 5; A.S.A. 1947, § 82-1904; Acts 1987, No. 617, § 1; 1993, No. 163, § 16; 1993, No. 165, § 16; 1999, No. 1164, § 24.

U.S. Code. The Federal Water Pollution Control Act, as amended, referred to in this section, is codified primarily as 33 U.S.C. § 1251 et seq.

CASE NOTES

Administrative Hearing.
Where, pursuant to this section, Department of Pollution Control and Ecology sought to obtain assessment of a civil penalty by the circuit court against defendant company without filing any civil action under § 8-4-103(b), and there was no current violation at the time the plaintiff sought the penalty, trial court properly dismissed the action on the ground that it had no jurisdiction to consider the matter prior to an administrative hearing. Ark. Dep't of Pollution Control & Ecology v. B.J. McAdams, Inc., 303 Ark. 144, 792 S.W.2d 611 (1990).

8-4-208. State water pollution control agency — Administration of permit program generally.

(a) The Arkansas Department of Environmental Quality is authorized, subject to the approval of the Governor, to administer on behalf of the state its own permit program for discharges into navigable waters within its jurisdiction in lieu of that of the United States Environmental Protection Agency. The department is also authorized to submit to the Administrator of the United States Environmental Protection Agency for approval a full and complete description of the program which the department proposes to establish and administer under state law, as provided by § 402(b) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1342(b). To that end, the department and the Arkansas Pollution Control and Ecology Commission are vested with all necessary authority and power to meet the requirements of § 402(b) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1342(b), and the guidelines promul-

gated by the United States Environmental Protection Agency pursuant to § 304(h)(2) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1314(h), to engage in an approved continuing planning process under § 303(e) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1313(e), and to perform any and all acts necessary to carry out the purposes and requirements of the Federal Water Pollution Control Act Amendments of 1972 relating to this state's participation in the National Pollutant Discharge Elimination System established under the Federal Water Pollution Control Act Amendments of 1972, subject to all restrictions contained in the Federal Water Pollution Control Act Amendments of 1972 and guidelines.

(b) The department shall further have the authority to accept a delegation of authority from the Administrator of the United States Environmental Protection Agency under the Federal Water Pollution Control Act Amendments of 1972 and to exercise and enforce the authority delegated.

(c) Any public hearing that may be held by the Director of the Arkansas Department of Environmental Quality preliminary to acting on a permit application as required by the Federal Water Pollution Control Act Amendments of 1972 and guidelines, unless otherwise designated in the notice of hearing, shall be for informational purposes only and shall not be deemed a hearing before the commission within the meaning of § 8-4-205. No appeal may be taken therefrom.

History. Acts 1949, No. 472, [Part 1], § 3; 1973, No. 262, § 5; 1975, No. 743, § 5; A.S.A. 1947, § 82-1904; Acts 1993, No. 163, § 17; 1993, No. 165, § 17; 1999, No. 1164, § 25.

U.S. Code. The Federal Water Pollution Control Act Amendments of 1972, referred to in this section, are codified primarily as 33 U.S.C. § 1251 et seq.

The guidelines promulgated by the United States Environmental Protection

Agency pursuant to § 304(h) of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. § 1314(h)), referred to in this section, appear as 40 C.F.R. § 136.1 et seq.

Cross References. Requirement of disclosure statement from permit applicants, § 8-1-106(b).

8-4-209. State water pollution control agency — Participation of certain persons prohibited in approval of permit applications.

Any provision of state law to the contrary notwithstanding, no member of the Arkansas Department of Environmental Quality or the Arkansas Pollution Control and Ecology Commission or other state agency who receives or has during the previous two (2) years received a significant portion of his or her income directly or indirectly from permit holders or applicants for a permit shall participate in the approval of the National Pollutant Discharge Elimination System permit applications or portions thereof.

History. Acts 1949, No. 472, [Part 1], § 2; 1975, No. 743, § 5; A.S.A. 1947, § 82-1904.

8-4-210. Investigations and hearings generally.

(a) The Arkansas Pollution Control and Ecology Commission is given and charged with the power and duty to conduct such investigations and hold such hearings as it may deem advisable and necessary for the discharge of its duties under this chapter and to authorize any member, employee, or agent appointed by it to conduct such investigations or hold such hearings.

(b) In any such hearing or investigation, any member of the commission or any employee or agent thereto authorized by the commission may administer oaths, examine witnesses, and issue, in the name of the commission, subpoenas requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearing or investigation.

(c) Witnesses shall receive the same fees and mileage as in civil actions, to be paid out of funds appropriated to the commission.

(d)(1) In case of contumacy or refusal to obey a subpoena issued under this section or refusal to testify, the circuit court of the county where the proceeding is pending or in which the person guilty of the contumacy or refusal to obey is found or resides shall have jurisdiction, upon application of the commission or its authorized member, employee, agent, or administrative law judge, to issue to the person an order requiring him or her to appear and testify or produce evidence, as the case may require.

(2) A failure to obey the order of the court may be punished by the court as contempt.

(e) In accordance with the powers set forth in subsections (a)-(d) of this section, the commission is authorized to conduct adjudicatory hearings providing an aggrieved person with standing a forum for contesting any decision of the Arkansas Department of Environmental Quality. For the purposes of such hearings, the commission's jurisdiction shall be construed as including all regulatory programs vested with the department.

History. Acts 1949, No. 472, [Part 1], § 3; A.S.A. 1947, § 82-1904; Acts 1997, No. 1219, § 5; 2015, No. 838, § 5.

Amendments. The 2015 amendment

inserted designations (d)(1) and (d)(2); and substituted "administrative law judge" for "hearing officer" in (d)(1).

CASE NOTES

Construction.

The right to public participation in hearings before the Department of Pollution Control and Ecology under Arkansas law is comparable to 33 U.S.C. § 1319(g),

especially in view of 40 C.F.R. § 123.27(d). *Ark. Wildlife Fed'n v. ICI Ams. Inc.*, 842 F. Supp. 1140 (E.D. Ark. 1993), *aff'd*, 29 F.3d 376 (8th Cir. 1994).

8-4-211. Declaratory orders.

(a) Any permittee or person subject to regulation may petition the Arkansas Pollution Control and Ecology Commission for a declaratory order as to the application of any rule, statute, permit, or order enforced by the Arkansas Department of Environmental Quality or the commission.

(b) Such petitions shall be processed for adjudicatory review in the same manner as appeals under the procedures prescribed by §§ 8-1-203, 8-4-205, 8-4-212, and 8-4-218 — 8-4-229.

History. Acts 1949, No. 472, [Part 1], 1904; Acts 1995, No. 384, § 4; 1997, No. § 3; 1961, No. 120, § 3; A.S.A. 1947, § 82- 1219, § 5.

CASE NOTES

Cited: *Romine v. Ark. Dep't of Env'tl. Quality*, 342 Ark. 380, 40 S.W.3d 731 (2000).

8-4-212. Adjudicatory hearings and orders.

(a) No final order resolving a contested decision of the Arkansas Department of Environmental Quality shall be issued until the Arkansas Pollution Control and Ecology Commission has provided aggrieved persons that have standing the opportunity for an adjudicatory hearing upon the matter.

(b) Any person that will be directly affected by the order shall have the right to be heard at the hearing, to submit evidence, and to be represented by counsel.

(c) Written notice specifying the time and place of the hearing shall be served by the commission in the manner provided by § 8-4-214 upon all persons known by it to be directly affected by the order, not less than ten (10) days before the date of the hearing.

(d) A copy of any order issued by the commission after the hearing shall also be served upon the persons.

History. Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906; Acts 1997, No. 1219, § 5.

CASE NOTES**Construction.**

The right to public participation in hearings before the Department of Pollution Control and Ecology under Arkansas law is comparable to 33 U.S.C. § 1319(g),

especially in view of 40 C.F.R. § 123.27(d). *Ark. Wildlife Fed'n v. ICI Ams. Inc.*, 842 F. Supp. 1140 (E.D. Ark. 1993), *aff'd*, 29 F.3d 376 (8th Cir. 1994).

8-4-213. Conclusiveness of commission actions.

(a) If no appeal is taken from an order, a rule, a regulation, or other decision of the Arkansas Pollution Control and Ecology Commission as provided in §§ 8-4-222 — 8-4-229, or if the action of the commission is affirmed on appeal, then the action of the commission in the matter shall be deemed conclusive, and the validity and reasonableness thereof shall not be questioned in any other action or proceeding.

(b) However, this section shall not preclude the authority of the commission to modify or rescind its actions.

History. Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906; Acts 1993, No. 163, § 18; 1993, No. 165, § 18.

CASE NOTES

Cited: *Hamilton v. Ark. Pollution Control & Ecology Comm'n*, 333 Ark. 370, 969 S.W.2d 653 (1998).

8-4-214. Service of notice, orders, etc.

(a) Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the Arkansas Pollution Control and Ecology Commission may be served upon any person affected thereby, personally or by publication. Proof of the service may be made in like manner as in the case of service of a summons in a civil action, with the proof to be filed in the office of the commission.

(b)(1) Service may be had by mailing a copy of the notice, order, or other instrument, by certified mail, directed to the person affected at his or her last known post office address as shown by the files or records of the commission. Proof of the mailing may be made by the affidavit of the person that did the mailing, filed in the office of the commission.

(2) Service by publication shall be accomplished by one (1) insertion in a newspaper of general circulation in the area affected.

(c) Every certificate or affidavit of service made and filed as provided in this section shall be prima facie evidence of the facts therein stated, and a certified copy thereof shall have like force and effect.

History. Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906.

8-4-215. Intergovernmental cooperation.

(a) The Arkansas Department of Environmental Quality or its successor and the Arkansas Pollution Control and Ecology Commission, so far as it is not inconsistent with its duties under the laws of this state, may assist and cooperate with any agency of another state or the United States in any matter relating to water pollution control.

(b)(1) The commission or the department may receive and accept money, property, or services from any person or from any agency described in subsection (a) of this section or from any other source for any water pollution control purpose within the scope of its functions under this chapter.

(2) All moneys so received shall be used for the operation and activities of the commission or department and for no other purposes.

(c)(1) The department or its successor may enter into agreements with the responsible authorities of the United States or other states, subject to approval by the Governor, relative to policies, methods, means, and procedures to be employed to control pollution of any interstate waters and may carry out these agreements by appropriate general and special orders.

(2)(A) This power shall not be deemed to extend to the modification of any agreement with any other state concluded by direct legislative act.

(B) However, unless otherwise provided, the department shall be the agency for the administration and enforcement of any such legislative agreement.

History. Acts 1949, No. 472, [Part 1], 1907; Acts 1997, No. 1219, § 5; 1999, No. § 6; 1973, No. 262, § 8; A.S.A. 1947, § 82- 1164, § 26.

RESEARCH REFERENCES

Ark. L. Rev. Nathan R. Finch, Comment: Nutrient Water Quality Trading: A Market-Based Solution to Water Pollution in the Natural State, 69 Ark. L. Rev. 839 (2016).

8-4-216. Information and inspections.

(a) The owner or operator of or any contributor of sewage, industrial wastes, or other wastes to any disposal system or an industrial user of a publicly owned treatment system, when requested by the Director of the Arkansas Department of Environmental Quality, shall furnish to the Arkansas Department of Environmental Quality any information that is relevant to the subject of this chapter. The owner or operator shall establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment or methods, including, when appropriate, biological monitoring methods, sample such effluents, and provide such other information as the director may reasonably require.

(b) The department or any authorized employee or agent of the department may examine and copy any book, papers, records, or memoranda pertaining to the operation of a disposal system.

(c) Whenever it shall be necessary for the purpose of this chapter, the department or any authorized member, employee, or agent of the department may enter upon any public or private property for the purpose of obtaining information or conducting surveys or investigations.

History. Acts 1949, No. 472, [Part 1], § 6; A.S.A. 1947, § 82-1905; Acts 1999, § 4; 1973, No. 262, § 6; 1975, No. 743, No. 1164, § 27.

8-4-217. Unlawful actions.

(a) It shall be unlawful for any person to:

(1) Cause pollution, as defined in § 8-4-102, of any of the waters of this state;

(2) Place or cause to be placed any sewage, industrial waste, or other wastes in a location where it is likely to cause pollution of any waters of this state;

(3) Violate any provisions of this chapter or of any rule, regulation, or order adopted by the Arkansas Pollution Control and Ecology Commission under this chapter or of a permit issued under this chapter by the Arkansas Department of Environmental Quality;

(4) Knowingly to make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter;

(5) Falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this chapter; or

(6) Sell, offer or expose for sale, give, or furnish any synthetic detergent or detergent containing any phosphorus, expressed as elemental phosphorus, including synthetic detergents or detergents manufactured for use as laundry or dishwashing detergents within this state from and after January 1, 1994, except as provided below:

(A) Products that may be used, sold, manufactured, or distributed for use or sale regardless of phosphorus content include:

(i) A detergent:

(a) Used in dairy, beverage, or food processing cleaning equipment;

(b) Used in hospitals, veterinary hospitals, clinics, healthcare facilities, or in agricultural production;

(c) Used by industry for metal cleaning or reconditioning;

(d) Manufactured, stored, or distributed for use or sale outside the state;

(e) Used in any laboratory, including a biological laboratory, research facility, chemical laboratory, and engineering laboratory;

(f) Used in a commercial laundry that provides laundry services for a hospital, healthcare facility, or veterinary hospital; or

(g) Used for surface cleaning, appliance cleaning, or specialty home cleaning, and not for dishwashing or laundry;

(ii) A phosphoric acid product, including a sanitizer, brightener, acid cleaner, or metal conditioner; and

(iii) A substance the department excludes from the phosphorus limitations of this section based on a finding that compliance with this section would:

(a) Create a significant hardship on the user; or

(b) Be unreasonable because of the lack of an adequate substitute cleaning agent that could be substituted for the subject cleaning agent without significant cost or effect differences;

(B) A person may use, sell, manufacture, or distribute for use or sale a laundry detergent that contains five-tenths percent (.5%) phosphorus or less that is incidental to manufacturing; and

(C) A person may use, sell, manufacture, or distribute for use or sale a dishwashing detergent that contains eight and seven-tenths percent (8.7%) phosphorus or less by weight.

(b)(1) It shall be unlawful for any person to engage in any of the following acts without having first obtained a written permit from the department:

(A) To construct, install, modify, or operate any disposal system or any part thereof, or any extension or addition thereto, that will discharge into any of the waters of this state;

(B) To increase in volume or strength any sewage, industrial waste, or other wastes in excess of the permissive discharges specified under any existing permit;

(C) To construct, install, or operate any building, plant, works, establishment, or facility, or any extension or modification thereof, or addition thereto, the operation of which would result in discharge of any wastes into the waters of this state or would otherwise alter the physical, chemical, or biological properties of any waters of this state in any manner not already lawfully authorized;

(D) To construct or use any new outlet for the discharge of any wastes into the waters of this state; or

(E) To discharge sewage, industrial waste, or other wastes into any of the waters of this state.

(2) The department may require the submission of such plans, specifications, and other information as it deems relevant in connection with the issuance of disposal permits.

History. Acts 1949, No. 472, [Part 1], § 8; 1961, No. 120, § 7; 1973, No. 262, § 9; 1975, No. 743, § 7; A.S.A. 1947, § 82-1908; Acts 1993, No. 454, § 1; 1993, No. 461, § 1; 1997, No. 1219, § 5.

A.C.R.C. Notes. As originally amended by identical Acts 1993, Nos. 454 and 461, § 1, subdivisions (a)(6)(B) and (a)(6)(C) began "After January 1, 1994."

RESEARCH REFERENCES

Ark. L. Rev. Noble and Looney, The Emerging Legal Framework for Animal Agricultural Waste Management in Arkansas, 47 Ark. L. Rev. 159.

U. Ark. Little Rock L.J. Wright, In

Storage Tank Funds We Trust: An Analysis of Their Role in Protecting the Environment and Small Business, 13 U. Ark. Little Rock L.J. 417.

CASE NOTES

ANALYSIS

Escape of Dioxin.
Violations.

Escape of Dioxin.

Where the record showed that dioxin was escaping from a plant site in quantities that under an acceptable, but unproved, theory could be considered as teratogenic, mutagenic, fetotoxic, and carcinogenic, there was a reasonable medical concern over the public health, and therefore the escape of dioxin into a creek and bayou from the plant site constituted an imminent and substantial endangerment to the health of persons and was subject to abatement. *United States v. Vertac Chem.*

Corp., 489 F. Supp. 870 (E.D. Ark. 1980), *aff'd*, 961 F.2d 796 (8th Cir. 1992).

Violations.

Where a corporation with an incinerator permit transferred all of its stock to a second corporation, there was substantial evidence to support the Arkansas Pollution Control and Ecology Commission's conclusion that the first corporation thereby transferred its permitted facility to the second corporation, a transfer prohibited by the permit. *Enviroclean, Inc. v. Ark. Pollution Control & Ecology Comm'n*, 314 Ark. 98, 858 S.W.2d 116 (1993).

Cited: *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

8-4-218. Violations of chapter, orders, rules, etc. — Hearings — Notice.

(a) Whenever the Arkansas Department of Environmental Quality or its successor determines that there are reasonable grounds to believe that there has been a violation of any of the provisions of this chapter or any order, rule, or regulation of the Arkansas Pollution Control and Ecology Commission, it may give written notice to the alleged violator specifying the causes of complaint.

(b) The notice shall require that the matters that are the causes of complaint be corrected or that the alleged violator appear before the commission at a time and place specified in the notice and answer the charges that are the causes of complaint.

(c) The notice shall be served upon the alleged violator in accordance with the provisions of § 8-4-214 not less than ten (10) days before the time set for the hearing.

History. Acts 1949, No. 472, [Part 1], § 5; 1961, No. 120, § 6; A.S.A. 1947, § 82-1906; Acts 1997, No. 1219, § 5; 1999, No. 1164, § 28; 2013, No. 1127, § 3.

Amendments. The 2013 amendment substituted "that are the causes of complaint" for "complained of" twice in (b).

CASE NOTES

Construction.

The right to public participation in hearings before the Department of Pollution Control and Ecology under Arkansas law is comparable to 33 U.S.C. § 1319(g),

especially in view of 40 C.F.R. § 123.27(d). *Ark. Wildlife Fed'n v. ICI Ams. Inc.*, 842 F. Supp. 1140 (E.D. Ark. 1993), *aff'd*, 29 F.3d 376 (8th Cir. 1994).

8-4-219. Violations of chapter, orders, rules, etc. — Hearings — Conduct.

(a) The Arkansas Pollution Control and Ecology Commission shall afford an opportunity for a fair hearing to the alleged violator at the time and place specified in the notice or any modification of the notice.

(b) A hearing may be conducted by the commission or its administrative law judge, who shall have the power and authority to conduct hearings in the name of the commission at any time and place.

(c) A record or summary of the proceedings of the hearings shall be taken and filed at the office of the commission.

History. Acts 1949, No. 472, [Part 1], § 5; 1961, No. 120, § 6; A.S.A. 1947, § 82-1906; Acts 1997, No. 1219, § 5; 2015, No. 838, § 6.

Amendments. The 2015 amendment substituted “administrative law judge” for “hearing officer” in (b).

8-4-220. Violation of chapter, orders, rules, etc. — Order of department without hearing.

(a) When the Arkansas Department of Environmental Quality or its successor finds that an emergency exists requiring immediate action to protect the public health or welfare it may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as it deems necessary to meet the emergency.

(b) Notwithstanding the provisions of §§ 8-4-218 and 8-4-219, the order shall be effective immediately.

(c) Any person to which the order is directed shall comply immediately but, on application to the Arkansas Pollution Control and Ecology Commission, shall be afforded a hearing within ten (10) days after receipt of a written request therefor.

(d) On the basis of the hearing, the commission shall continue the order in effect, revoke it, or modify it.

History. Acts 1949, No. 472, [Part 1], § 5; 1961, No. 120, § 6; A.S.A. 1947, § 82-1906; Acts 1997, No. 1219, § 5; 1999, No. 1164, § 29.

8-4-221. Violations of chapter, orders, rules, etc. — Hearing — Orders.

On the basis of the evidence produced at the hearing, the Arkansas Pollution Control and Ecology Commission shall enter such order as in its opinion will best further the purposes of this chapter. A copy of the order shall be served upon the alleged violator and on such other persons as shall have appeared at the hearing and made written request for notice of the order, in the manner provided by § 8-4-214. The order of the commission shall become final and binding on all parties unless appealed, as provided in §§ 8-4-222 — 8-4-229, within thirty (30) days after service of the order.

History. Acts 1949, No. 472, [Part 1], § 5; 1961, No. 120, § 6; A.S.A. 1947, § 82-1906; Acts 1993, No. 163, § 19; 1993, No. 165, § 19.

8-4-222. Appeals — Entitlement.

An appeal may be taken from a final order, rule, regulation, or other final determination of the Arkansas Pollution Control and Ecology Commission under §§ 8-4-223 — 8-4-229 by those parties that have standing and have exhausted their administrative appeals.

History. Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906; Acts 1993, No. 163, § 20; 1993, No. 165, § 20; 2013, No. 1021, § 2.

Amendments. The 2013 amendment inserted “under §§ 8-4-223 — 8-4-229” and deleted “to the circuit court of the county in which the business, industry, municipality, or thing involved is situated, in the manner provided in §§ 8-4-223 — 8-4-229” at the end.

CASE NOTES

Construction. The Arkansas provisions for judicial review are comparable to those found in 33 U.S.C. § 1319(g)(8). *Ark. Wildlife Fed’n v. ICI Ams. Inc.*, 842 F. Supp. 1140 (E.D. Ark. 1993), *aff’d*, 29 F.3d 376 (8th Cir. 1994).

8-4-223. Appeals — Notice.

(a)(1) Within thirty (30) days after service of a copy of the final order, rule, regulation, or other final determination of the Arkansas Pollution Control and Ecology Commission, the appellant may file a notice of appeal with the circuit court of the county in which the business, industry, municipality, or thing involved is situated.

(2) A copy of the notice of appeal shall be served upon the Secretary of the Arkansas Pollution Control and Ecology Commission by personal delivery or by mail with a return receipt requested within ten (10) days of filing with the circuit court.

(b)(1) The notice of appeal:

(A) Shall state the action of the commission appealed from;

(B) Shall specify the grounds of the appeal, including points of both law and fact that are asserted or questioned by the appellant; and

(C) May contain any other allegations or denials of fact pertinent to the appeal.

(2) The notice of appeal shall state an address within the state at which service of a response to the notice of appeal and other papers in the matter may be made upon the appellant.

(c) Upon filing the notice of appeal with the clerk of the circuit court, the circuit court shall have jurisdiction of the appeal.

(d)(1) Within ten (10) business days of service of the notice of appeal required under subdivision (a)(2) of this section, the owner or operator of the business, industry, municipality, or thing involved may file a motion to transfer the appeal from the circuit court to the Court of Appeals.

(2) Upon the filing of a motion under subdivision (d)(1) of this section, the appeal shall be transferred from the circuit court to the Court of Appeals.

History. Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906; Acts 1997, No. 896, § 1; 1997, No. 1219, § 5; 2013, No. 1021, § 3.

Amendments. The 2013 amendment added (d).

CASE NOTES

ANALYSIS

Jurisdiction.
Scope of Review.

Jurisdiction.

Service of notice of appeal on a party to the litigation does not give the court jurisdiction; the court has jurisdiction only when the notice is filed with the clerk of the circuit court. *Cash v. Ark. Comm'n on Pollution Control & Ecology*, 300 Ark. 317, 778 S.W.2d 606 (1989).

Scope of Review.

Subsection (d) of this section is intended simply to expedite the process of bringing

an Arkansas Pollution Control & Ecology Commission ruling forward for appellate review, and there is no intent to divest the appellate court of its ordinary function. Therefore, in a case where an administrative decision to affirm the granting of a permit to build and operate a new steel mill was upheld, the appellate court did not have to review a decision from the Commission in the posture of a circuit court. *Nucor Steel-Arkansas v. Ark. Pollution Control & Ecology Comm'n*, 2015 Ark. App. 703, 478 S.W.3d 232 (2015).

8-4-224. Appeals — Parties.

(a)(1) The appellant, the Arkansas Pollution Control and Ecology Commission, and the owner or operator of the business, industry, municipality, or thing involved, if applicable, shall in all cases be the original parties to an appeal.

(2) The state, through the Attorney General or any other person affected, may become a party by intervention as in a civil action, upon showing cause therefor.

(3) The Attorney General shall represent the commission, if requested, upon all these appeals, unless he or she appeals or intervenes in behalf of the state.

(b) No bond or deposit for costs shall be required of the state or of the commission upon any such appeal or upon any subsequent appeal to the Supreme Court or other court proceedings pertaining to the matter.

History. Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906; Acts 2013, No. 1021, § 4.

inserted “and the owner or operator of the business, industry, municipality, or thing involved, if applicable” in (a)(1).

Amendments. The 2013 amendment

8-4-225. Appeals — Venue.

Except as provided in § 8-4-223(d), upon written consent of the parties or for cause shown after hearing upon notice to all parties, the venue of an appeal may be changed by order of the circuit court to the circuit court of a county in which the order, rule, regulation, or decision appealed from would take effect.

History. Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906; Acts 2013, No. 1021, § 5.	Amendments. The 2013 amendment added the exception and inserted “circuit” preceding the first occurrence of “court”.
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8-4-226. Appeal — Response by commission and record.

(a)(1) Within thirty (30) days after service of the notice of appeal on the Secretary of the Arkansas Pollution Control and Ecology Commission, the Arkansas Pollution Control and Ecology Commission shall file with the clerk of the circuit court having jurisdiction of the appeal a response to the notice of appeal and the record upon which the final order, rule, regulation, or other final determination complained of was entered.

(2) The thirty-day period for filing a response to the notice of appeal and the record by the commission may be extended by the court for cause shown for not more than an additional sixty (60) days.

(3)(A) The record shall consist of:

(i) A copy of any application or petition, all pleadings, or other material paper whereon the action of the commission appealed from was based;

(ii) A statement of any findings of fact, rulings, or conclusions of law made by the commission;

(iii) A copy of the final order, rule, regulation, or other final decision appealed from; and

(iv) All testimony, exhibits, and other evidence submitted to the commission in the case.

(B) The parties to the appeal may stipulate that only a specified portion of the record shall be filed with the circuit court.

(4) A response to the notice of appeal filed by the commission shall consist of any statements, admissions, or denials upon the questions of law or fact raised in the notice of appeal as the commission may deem pertinent.

(b) Within the time allowed for making and filing the response, a copy of the response shall be mailed to or served upon the appellant or the appellant’s attorney.

(c)(1) The allegations or new matter in the response shall be deemed to be denied by the appellant unless expressly admitted, and no further pleadings shall be interposed.

(2) Otherwise, the allegations of the notice of appeal and response shall have like effect as the pleadings in a civil action and shall be subject to like proceedings, so far as applicable.

(d) With respect to an appeal that is before the Court of Appeals as the result of a motion to transfer an appeal under § 8-4-223(d), the requirements applicable to the commission's response and the record shall be determined under the Rules of Appellate Procedure — Civil.

History. Acts 1949, No. 472, [Part 1], § 5; 1965, No. 183, § 4; A.S.A. 1947, § 82-1906; Acts 1997, No. 896, § 2; 1997, No. 1219, § 5; 2013, No. 1021, § 6.

Amendments. The 2013 amendment added (d).

CASE NOTES

Cited: Gurley v. Mathis, 313 Ark. 412, 856 S.W.2d 616 (1993).

8-4-227. Appeal — Review by circuit court.

(a) The appeal shall be heard and determined by the circuit court upon the issues raised by the notice of appeal and response according to the rules relating to the trial of civil actions, so far as applicable.

(b) If, before the date set for the hearing, application is made to the circuit court for leave to present additional evidence and the circuit court finds that the evidence is material and that there were good reasons for failure to present it in the proceeding before the Arkansas Pollution Control and Ecology Commission, then the circuit court may order that the additional evidence be taken before the commission upon such conditions as may be just. The commission may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing circuit court.

(c)(1)(A) The review shall be conducted by the circuit court without a jury and shall be confined to the record.

(B) However, in cases of alleged irregularities in procedure before the commission that are not shown in the record, testimony may be taken before the circuit court.

(2) The circuit court shall, upon request, hear oral argument and receive written briefs.

(d) The circuit court may affirm the decision of the commission or vacate or suspend the decision, in whole or part, and remand the case to the commission for further action in conformity with the decision of the circuit court if the action of the commission is:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the commission's statutory authority;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Not supported by substantial evidence of record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion.

History. Acts 1949, No. 472, [Part 1], § 5; 1985, No. 284, § 1; A.S.A. 1947, § 82-1906; Acts 1995, No. 895, § 3; 1997, No. 896, § 3; 1997, No. 1219, § 5; 2013, No. 1021, § 7.

Amendments. The 2013 amendment inserted “circuit” before “court” throughout the section and added the (c)(1)(A) and (B) designations.

CASE NOTES

ANALYSIS

Constitutionality.
 Applicability.
 Evidence.
 Scope of Review.
 Standard of Review.

Constitutionality.

Former provision of this section was unconstitutional to the extent that it authorized the circuit court to review de novo matters of executive discretion. Ark. Comm’n on Pollution Control & Ecology v. Land Developers, Inc., 284 Ark. 179, 680 S.W.2d 909 (1984) (decision prior to 1985 amendment).

Applicability.

Subdivision (d)(5) of this section addresses appeals from the Arkansas Pollution Control and Ecology Commission to circuit court and not appeals to the Arkansas Supreme Court. Gurley v. Mathis, 313 Ark. 412, 856 S.W.2d 616 (1993).

Evidence.

Subdivision (c)(1)(B) of this section does not grant an appellate court authority to hear additional evidence; therefore, the appellate court did not address a concern over losing the opportunity to present additional evidence in a case relating to the granting of a permit to operate a steel mill. Nucor Steel-Arkansas v. Ark. Pollu-

tion Control & Ecology Comm’n, 2015 Ark. App. 703, 478 S.W.3d 232 (2015).

Scope of Review.

Court erred by substituting its judgment for that of the commission and in exceeding the statutory limits upon its authority to review the commission’s order. Ark. Comm’n of Pollution Control & Ecology v. Husky Indus., Inc., 293 Ark. 249, 737 S.W.2d 157 (1987).

Finding that the commission “did not give proper consideration” to the threat to the economies of the communities involved posed by “strict compliance” is not a basis upon which review was permitted. Ark. Comm’n of Pollution Control & Ecology v. Husky Indus., Inc., 293 Ark. 249, 737 S.W.2d 157 (1987).

Standard of Review.

Arkansas Pollution Control and Ecology Commission’s order approving landfill’s application to expand was properly upheld by a trial court pursuant to subsection (d) of this section because the Commission had correctly concluded that the Arkansas Tri-County Solid Waste District Board’s denial of a certificate of need due to the geology of the area was improper; there was substantial evidence to support the Commission’s decision. Tri-County Solid Waste Dist. v. Ark. Pollution Control & Ecology Comm’n, 365 Ark. 368, 230 S.W.3d 545 (2006).

8-4-228. Appeal — Stay of proceedings.

(a) The taking effect of any action of the Arkansas Pollution Control and Ecology Commission shall not be stayed by an appeal except by order of the court for cause shown by the appellant.

(b) The granting of a stay may be conditioned upon the furnishing by the appellant of such reasonable security for costs as the court may direct.

(c) A stay may be vacated on application of the commission or any other party after hearing upon notice to the appellant and to such other parties as the court may direct.

History. Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906.

8-4-229. Appeals, proceedings, etc. — Presumptions.

(a) In any appeal or other proceeding involving any order, rule, regulation, or other decision of the Arkansas Pollution Control and Ecology Commission, the action of the commission shall be prima facie evidence reasonable and valid, and it shall be presumed that all requirements of the law pertaining to the taking thereof have been complied with.

(b) All findings of fact made by the commission shall be prima facie evidence of the matters therein stated.

(c) The burden of proving the contrary of any provision of this section shall rest upon the appellant or other party questioning the action of the commission.

History. Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906.

CASE NOTES

ANALYSIS

Permits.
Standard of Review.

Permits.

Pursuant to subsection (c), the organizations failed to meet their burden of showing that the Arkansas Pollution Control and Ecology Commission's decision affirming the issuance of air and hazardous-waste permits for the construction of a facility to dispose of chemical weapons was erroneous because they failed to show that the issuance of the permits for the facility would cause air pollution, as defined in § 8-4-303(5); thus, the Commission's decision to issue the permits was supported by substantial evidence and was proper. *Pine Bluff for Safe Disposal v.*

Ark. Pollution Control & Ecology Comm'n, 354 Ark. 563, 127 S.W.3d 509 (2003).

Standard of Review.

In a case concerning a permit to operate a steel mill, the decision was not subject to de novo review because this section unquestionably required a deferential review of Arkansas Pollution Control & Ecology Commission rulings, which was inconsistent with a de novo review. Moreover, a ruling on the issuance of a regulatory permit was an exercise of executive function, hinging on executive discretion, and was not a quasi-judicial ruling. *Nucor Steel-Arkansas v. Ark. Pollution Control & Ecology Comm'n*, 2015 Ark. App. 703, 478 S.W.3d 232 (2015).

Cited: *Tri-County Solid Waste Dist. v. Ark. Pollution Control & Ecology Comm'n*, 365 Ark. 368, 230 S.W.3d 545 (2006).

8-4-230. Temporary variances and interim authority.

(a)(1) Unless otherwise expressly prohibited by federal law, the Director of the Arkansas Department of Environmental Quality may, for compelling reasons and good cause shown, grant:

(A) A temporary variance from the requirements of a permit issued by the Arkansas Department of Environmental Quality; or

(B) Interim authority to construct or operate during the application review and permit issuance process.

(2) Such temporary variances or interim authority shall not exceed a period of ninety (90) days, except when a longer period is justified by circumstances beyond the applicant's control. The department may grant a request for an extension of a temporary variance or interim authority at any time prior to the expiration date.

(3) The department may require an initial processing fee of two hundred dollars (\$200) for a request for a temporary variance or an interim authority request. This fee shall not be required for requests for an extension of any temporary variance or interim authority.

(b)(1) In considering a request for a temporary variance under subdivision (a)(1)(A) of this section, the director shall consider:

(A) The environmental and public health effects of the temporary variance;

(B) Any economic advantage obtained by the party requesting the temporary variance over other similarly situated facilities that are operating in accordance with similar permit conditions and that have not requested a temporary variance; and

(C) Whether strict compliance would result in the substantial curtailment or closing down of an existing or proposed business, plant, or operation.

(2) In addition, the director may take into account the following factors in considering a request under subdivision (a)(1) of this section:

(A) Whether strict compliance with permit terms is inappropriate because of conditions beyond the control of the person requesting the temporary variance;

(B) Whether the temporary variance request is prompted by recurrent or avoidable compliance problems;

(C) Whether a review of the operational history of the requesting facility reveals relevant information; and

(D) Whether the public interest will be served by a temporary variance.

(c) When considering any request for interim authority during the application review and permit issuance process pursuant to subdivision (a)(1)(B) of this section, the director may take into account the following factors in addition to the applicable factors of subsection (b) of this section:

(1) Whether the applicable permitting applications were timely and completely submitted;

(2) Whether there has been a delay in the final permitting action caused by conditions beyond the control of the person requesting the interim authority;

(3) Whether contractual or other business obligations will become due before a proper permit can be issued; and

(4) Whether the public interest will be served by construction or operation during the application review and permit issuance process.

(d) After a review of the applicable factors, the director may:

(1) Grant an unconditional variance or interim authority to the requesting party;

(2) Grant a conditional temporary variance or interim authority to the requesting party. Such conditions shall be designed to be protective of human health and the environment and must be clearly stated or referenced in the temporary variance or interim authority document; or

(3) Deny the request for a temporary variance or interim authority. If a denial is issued, the director shall clearly state the reason or reasons for the denial in a written response to the applicant.

(e)(1) The director's decision to grant or deny a temporary variance or interim authority to construct or operate shall be issued within ten (10) days of receipt of the request for the temporary variance or interim authority and shall be publicly noticed in a newspaper of general circulation in the state within five (5) business days of the director's decision. The applicant shall be responsible for the expense of the publication of a decision to grant a temporary variance or interim authority. The department shall be responsible for the expense of the publication of a decision to deny a temporary variance or interim authority.

(2) A person may object to the director's decision within ten (10) business days of the notice.

(3) A temporary variance or interim authority granted by the director is contingent upon the right of any person to object.

(4) An action taken by the applicant in reliance upon the grant of a temporary variance or interim authority during the application review and permit issuance process is strictly at the applicant's own risk, and an action or expenditure by the applicant during this period does not accrue equities in the applicant's favor.

(5) The public notice requirement under this section shall not apply to the director's decision to grant an extension of a temporary variance or interim authority.

(f) The director may also for compelling reasons or good cause shown revoke or modify the conditions of a temporary variance or interim authority previously granted.

(g)(1) An applicant that is denied a temporary variance or interim authority or that has a temporary variance or interim authority revoked or a third party that submitted timely objections during the application review and permit issuance process described in subsection (e) of this section may appeal the director's final decision to the Arkansas Pollution Control and Ecology Commission upon written request made within ten (10) days after notice of the director's decision.

(2)(A) Unless otherwise agreed to by the party requesting review of the director's decision, an appeal under subdivision (g)(1) of this section shall be considered by the commission at the next regularly scheduled commission meeting following submission of the written request.

(B) However:

(i) The decision of the director shall remain in effect during the appeal;

(ii) The commission's review shall be completed as expeditiously as possible; and

(iii) A final decision shall be issued by the commission within thirty (30) days unless all parties agree to extend the review time.

(C)(i) The commission may affirm, amend, modify, or revoke the director's final decision.

(ii) An affirmation of the director's final decision shall be based on the determination by the commission that the:

(a) Director adequately considered all relevant and applicable factors under subsections (b) and (c) of this section in arriving at the final decision; and

(b) Public interest will be served by the affirmation of the director's final decision.

(iii) An amendment, modification, or revocation of the director's final decision shall be based on a determination by the commission that the:

(a) Director's final decision was unduly burdensome, impractical, or unreasonable given the circumstances;

(b) Director failed to adequately consider the applicable factors under subsections (b) and (c) of this section; or

(c) Public interest will be served by the amendment, modification, or revocation of the director's final decision.

(h) A party that submits an objection to the director's decision under subdivision (e)(2) of this section and is aggrieved by a commission decision on a request for a temporary variance or interim authority may appeal as provided by applicable law.

History. Acts 1995, No. 943, § 1; 1999, No. 147, § 1; 2013, No. 1021, §§ 8-10.

Amendments. The 2013 amendment substituted "expressly prohibited by federal law" for "prohibited by preemptive federal law" in (a)(1); added (b)(1)(C); added "in considering a request under subdivision (a)(1) of this section" to the end of the introductory paragraph in (b)(2); deleted former (b)(2)(B); in (e)(1), inserted "be issued within ten (10) days of receipt of the request for the temporary

variance or interim authority and shall" and substituted "in a newspaper of general circulation in the state within five (5) business days" for "within ten (10) business days"; added the ending to (g)(1), beginning with "to the Arkansas Pollution Control"; rewrote (g)(2)(A); substituted "thirty (30) days" for "sixty (60) days" in (g)(2)(B)(iii); added (g)(2)(C); and inserted "that submits an objection to the director's decision under subdivision (e)(2) of this section and is" in (h).

8-4-231. Effectiveness of regulations or orders.

This act shall not be construed as impairing the continued effectiveness of any regulations or orders promulgated or issued by the Arkansas Pollution Control and Ecology Commission prior to March 31, 1999. Nor shall this act be construed as extinguishing or otherwise affecting the unexpired terms of any current members of the commission.

History. Acts 1997, No. 1219, § 10.

Meaning of "this act". Acts 1997, No. 1219, is codified primarily in §§ 8-4-201 et

seq., 8-4-301 et seq., and 8-5-201 et seq. For the full disposition of Acts 1997, No. 1219, see Tables Volume B.

8-4-232. Nutrient water quality trading programs — Definition.

(a) As used in this section, “nutrient” means a substance assimilated by an organism that promotes growth and replacement of cellular constituents, including without limitation nitrogen, phosphorus, and carbon.

(b)(1) The Arkansas Pollution Control and Ecology Commission may adopt regulations that specify requirements, standards, and procedures governing the establishment and implementation of nutrient water quality trading programs, including without limitation program scope, eligibility, and threshold treatment requirements.

(2) The nutrient water quality trading programs may include without limitation the following:

(A) The establishment and regulation of nutrient water quality trading exchanges;

(B) The establishment and regulation of nutrient water quality compliance associations;

(C) The authorization and regulation of nutrient water quality trading credits;

(D) The authorization and regulation of nutrient water quality offsets; and

(E)(i) The establishment of a schedule of user fees to be collected by the Arkansas Department of Environmental Quality from persons or entities utilizing nutrient water quality trades or offsets to comply with permit limits.

(ii) The user fees shall be based on a record calculating the reasonable costs to the department of implementing and enforcing each nutrient water quality trading, credit, or offset program.

(c) Under regulations adopted by the commission under subsection (b) of this section, the department may:

(1) Include terms and conditions in any appropriate permit that allow the eligible permit holder to use water quality trading arrangements such as water quality trading credits and water quality offsets as a means for complying with appropriate nutrient effluent limitations or conditions contained in the permit; and

(2) Issue permits to eligible compliance associations as a means for multiple eligible permit holders to collectively satisfy their aggregate permit limits for one (1) or more appropriate nutrient water quality parameters.

(d) A nutrient water quality trading program or arrangement established under this section shall provide that a decision to participate in the nutrient water quality trading program or arrangement is a matter of voluntary choice on the part of each participant in the nutrient water quality trading program or arrangement.

History. Acts 2015, No. 335, § 2.

A.C.R.C. Notes. Acts 2015, No. 335, § 1, provided: “Legislative findings and intent. The General Assembly finds that:

“(1) Water quality trading is a market-based approach to achieving water quality goals that can provide greater efficiency and cost savings by allowing one (1)

source to meet its regulatory obligations by using pollutant reductions created by another source that has lower pollution control costs;

“(2) Experience in other states has demonstrated that nutrient water quality trading programs, including the use of credits, offsets, and compliance associa-

tions, can result in quicker and more efficient achievement of water quality protection goals; and

“(3) Nutrient water quality trading should be encouraged wherever appropriate and facilitated by the development of applicable regulations and permit terms.”

RESEARCH REFERENCES

Ark. L. Rev. Nathan R. Finch, Comment: Nutrient Water Quality Trading: A Market-Based Solution to Water Pollution in the Natural State, 69 Ark. L. Rev. 839 (2016).

8-4-233. Nutrient Water Quality Trading Advisory Panel — Created — Members — Duties.

- (a) The Nutrient Water Quality Trading Advisory Panel is created, consisting of nine (9) members as follows:
 - (1) One (1) member appointed by the President Pro Tempore of the Senate;
 - (2) One (1) member appointed by the Speaker of the House of Representatives; and
 - (3) Seven (7) members appointed by the Governor as follows:
 - (A) One (1) member to represent agricultural interests;
 - (B) One (1) member to represent forestry interests;
 - (C) One (1) member to represent municipal wastewater treatment facility interests;
 - (D) One (1) member to represent public drinking water supply interests;
 - (E) One (1) member to represent the interests of industries that hold point source wastewater discharge permits; and
 - (F) Two (2) members to represent the interests of environmental organizations regarding water quality.
- (b)(1) A member shall serve a term of two (2) years or until a successor is appointed.
 - (2) A member may serve successive terms without limitation.
 - (3) If a vacancy occurs, the officer who made the original appointment for that position shall appoint a person who represents the same constituency as the member being replaced.
- (c)(1) A majority of the members shall constitute a quorum for the transaction of business.
 - (2) Meetings may be conducted with members participating via telephonic or other electronic conferencing methods.
 - (d)(1) The panel shall elect a chair and vice chair.
 - (2) The panel may adopt rules relating to the conduct of its meetings.
- (e) Members shall serve without compensation but may be reimbursed for expenses in accordance with § 25-16-902, if funds are available.

(f) The Arkansas Department of Environmental Quality shall provide meeting space and administrative services for the panel.

(g) The panel may:

(1) Advise the department and the Arkansas Natural Resources Commission regarding the desirability, design, and operation of nutrient water quality trading programs; and

(2) Advise the Arkansas Pollution Control and Ecology Commission and the Arkansas Natural Resources Commission regarding the promulgation of regulations involving nutrient water quality trading programs.

(h) The Arkansas Pollution Control and Ecology Commission shall not initiate a rulemaking proceeding to adopt a regulation that authorizes or governs nutrient water quality trading unless:

(1) The proposed regulation has been recommended by the panel; or

(2) A copy of the proposed regulation has been delivered to the panel at least sixty (60) calendar days before the date the request to initiate the rulemaking is filed with the Arkansas Pollution Control and Ecology Commission.

(i) Subsection (h) of this section does not limit the authority of the Arkansas Pollution Control and Ecology Commission to:

(1) Alter a proposed regulation at any time during the rulemaking proceeding; or

(2) Initiate a rulemaking proceeding if:

(A) The members of the panel have not been appointed; or

(B) The panel lacks an actively serving quorum.

History. Acts 2015, No. 335, § 2.

A.C.R.C. Notes. Acts 2015, No. 335, § 1, provided: “Legislative findings and intent. The General Assembly finds that:

“(1) Water quality trading is a market-based approach to achieving water quality goals that can provide greater efficiency and cost savings by allowing one (1) source to meet its regulatory obligations by using pollutant reductions created by another source that has lower pollution control costs;

“(2) Experience in other states has demonstrated that nutrient water quality trading programs, including the use of credits, offsets, and compliance associations, can result in quicker and more efficient achievement of water quality protection goals; and

“(3) Nutrient water quality trading should be encouraged wherever appropriate and facilitated by the development of applicable regulations and permit terms.”

RESEARCH REFERENCES

Ark. L. Rev. Nathan R. Finch, Comment: Nutrient Water Quality Trading: A Market-Based Solution to Water Pollution

in the Natural State, 69 Ark. L. Rev. 839 (2016).

8-4-234. Short-term activity authorization.

(a)(1) The Director of the Arkansas Department of Environmental Quality may authorize short-term activities that have potential to affect compliance with Arkansas water quality standards if:

(A) The short-term activity is essential to the protection or promotion of the public interest; and

(B) No permanent or long-term impairment of beneficial uses is likely to result from the short-term activity.

(2) Short-term activities eligible for authorization include without limitation:

(A) Wastewater treatment facility maintenance;

(B) Fish eradication projects;

(C) Mosquito abatement projects;

(D) Algae and weed control projects;

(E) Dredge and fill projects;

(F) Construction activities; or

(G) Activities that result in overall enhancement or maintenance of beneficial uses.

(b)(1) The Arkansas Department of Environmental Quality may collect a processing fee for a short-term activity authorization.

(2) The short-term activity authorization fee shall not exceed two hundred dollars (\$200) for each stream crossing, in-stream activity, or other eligible activity under subdivision (a)(2) of this section at each site identified in the application.

(3) The Arkansas Pollution Control and Ecology Commission may establish a fee schedule for short-term activity authorization fees imposed on a state agency, board, or commission or municipality, city, or county for a short-term activity not covered under subsection (c) of this section to include without limitation:

(A) Routine maintenance; or

(B) Road construction.

(4)(A) The department shall enter into an agreement with a state agency, board, or commission or municipality, city, or county that creates an alternative payment structure in lieu of fees authorized under subdivision (b)(2) of this section.

(B) An agreement entered into under subdivision (b)(4)(A) of this section shall include:

(i) A provision regarding waiver of fees under this section; and

(ii) A process under which the department provides notice to the state agency, board, or commission or municipality, city, or county of planned actions under this section that affect the state agency, board, or commission or municipality, city, or county.

(5) The department shall waive twenty-five percent (25%) of a fee assessed under this section to a state agency, board, or commission or municipality, city, or county in a fiscal year.

(c)(1) At the request of a state agency, board, or commission or municipality, city, or county, the director shall waive the short-term activity authorization fee under subsection (b) of this section to facilitate emergency activity limited to the following:

(A) Storm debris removal necessary to prevent damage to a bridge, road, or other structure;

(B) Emergency bridge maintenance or repair; or

(C) Emergency road maintenance or repair.

(2) A state agency, board, or commission or municipality, city, or county that submits a request for a waiver of the short-term activity authorization fee under subdivision (c)(1) of this section shall provide the department:

(A) Notice by phone or email before commencing any in-stream activity;

(B) A written request for waiver of the short-term activity authorization fee that includes:

(i) A request that the short-term activity fee be waived; and

(ii) A statement that describes the emergency conditions that require the short-term activity; and

(C) Written notice of completion, including detailed information concerning all in-stream activity.

(d) The director shall determine the necessary conditions for the authorization under this section.

(e) This section does not supersede existing state or federal permitting processes or requirements.

(f) The commission may promulgate regulations for the administration of this section.

History. Acts 2017, No. 585, § 1.

SUBCHAPTER 3 — AIR POLLUTION

SECTION.

8-4-301. Legislative intent.

8-4-302. Purpose.

8-4-303. Definitions.

8-4-304. Applicability of water pollution provisions.

8-4-305. Exceptions.

8-4-306. Political subdivisions preempted — Exception.

8-4-307. Private rights unchanged.

8-4-308. Industrial secrets confidential.

8-4-309. Construction limited — Exception.

8-4-310. Unlawful actions.

8-4-311. Powers generally.

8-4-312. Factors in exercise of powers.

SECTION.

8-4-313. Variance from regulations.

8-4-314. Compliance Advisory Panel — Small Business Stationary Source Technical and Environmental Compliance Assistance Program — Marketing Recyclables Program.

8-4-315. Permits.

8-4-316. Open burning of storm debris.

8-4-317. State implementation plans generally.

8-4-318. National Ambient Air Quality Standards implementation.

Publisher's Notes. Acts 1965, No. 183, § 7, provided in part that Acts 1949, No. 472 was amended by adding a new "Part 2, Air Pollution" (subchapter 3 of this chapter).

Acts 1997, No. 1219, § 1, provided: "Legislative intent. With Act 1230 of 1991, the General Assembly sought to delineate the respective responsibilities of the Ar-

kansas Pollution Control and Ecology Commission and the Arkansas Department of Pollution Control & Ecology. Confusion on these issues in the public's perception continues, however, primarily because of the similarity in the names of these entities. The purpose of this Act is to achieve the legislative intent of Act 1230 of 1991 and to definitively assign the ex-

ecutive, adjudicatory, and rulemaking roles for the State's regulatory functions concerning protection of the environment."

Cross References. Permit fees for air, water, and solid waste pollution control activities, § 8-1-101 et seq.

Effective Dates. Acts 1949, No. 472, § 12: approved Mar. 29, 1949. Emergency clause provided: "Whereas, the pollution of the waters and the streams in the State of Arkansas from sewage, industrial waste, garbage, municipal refuse, and many other sources has created and is creating a hazard and danger to the public health of the people of the State of Arkansas, and is endangering the fish and other wildlife of the State of Arkansas; and, whereas, improper and inadequate sewer systems and disposal plants and treatment works cannot be adequately inspected, checked, and supervised under existing laws; and, whereas, present laws to prevent the pollution of the streams and to protect the health and general welfare of the people are inadequate and there are overlapping authorities as to control and regulations; and whereas, the continuance of such conditions presents an immediate and continuing threat and hazard to the public peace, health, and safety, therefore an emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage."

Acts 1965, No. 183, § 8: Mar. 10, 1965. Emergency clause provided: "Whereas, the pollution of the air resources of the State of Arkansas by air contaminants can create serious hazards to the public health and welfare of the people; and, whereas, it is the public policy of the state to maintain such a reasonable degree of purity of the air to the end that the least possible injury shall be done to human, plant, or animal life or to property, and to maintain public enjoyment of the state's natural resources, consistent with the economic and industrial well-being of the state; and, whereas, existing laws to prevent, control, and abate air pollution are inadequate to protect the health and general welfare of the people; now, therefore, an emergency is hereby declared to exist and this act shall be in full force and effect from the date of its approval."

Acts 1995, No. 943, § 6: Apr. 5, 1995. Emergency clause provided: "It is hereby

found and determined by the General Assembly that, in order to avoid the needless disruption of business in this state, the director of the Department of Pollution Control and Ecology should be given authority to grant temporary variances and interim authority to construct or operate regulated activities. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to

exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2013, No. 1302, § 6: Apr. 18, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the current policy of the Arkansas Department of Environmental Quality of implementing the National Ambient Air Quality Standards through stationary source permitting is more stringent than the practices of other states in the region, thereby discouraging

the expenditure of capital improvement funds for economic development and environmental improvement projects within the State of Arkansas; and that this act is immediately necessary to align the policies for implementation of National Ambient Air Quality Standards and the development of state implementation plans to those of the federal government and other states. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

ALR. Recovery for injury to land caused by airborne pollutants. 2 A.L.R.4th 1054.

Statute of limitations as to cause of action for nuisance based on air pollution. 19 A.L.R.4th 456.

Am. Jur. 61B Am. Jur. 2d, Pollution Control, § 146 et seq.

C.J.S. 39A C.J.S., Health & Env., §§ 154-155.

8-4-301. Legislative intent.

(a) In the interest of the public health and welfare of the people, it is declared to be the public policy of the State of Arkansas to maintain such a reasonable degree of purity of the air resources of the state to the end that the least possible injury should be done to human, plant, or animal life or to property and to maintain public enjoyment of the state's natural resources, consistent with the economic and industrial well-being of the state.

(b) The program for the control of air pollution under this chapter shall be undertaken in a progressive manner, and each of its successive objectives shall be sought to be accomplished by a maximum of cooperation and conciliation among all the parties concerned.

History. Acts 1949, No. 472, [Part 2], § 1, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1931.

RESEARCH REFERENCES

Ark. L. Rev. Wright & Henry, The Arkansas Air Pollution Control Program: Past, Present and Future. 51 Ark. L. Rev. 227.

CASE NOTES

Cited: Enviroclean, Inc. v. Ark. Pollution Control & Ecology Comm’n, 314 Ark. 98, 858 S.W.2d 116 (1993).

8-4-302. Purpose.

It is the purpose of this subchapter to safeguard the air resources of the state by controlling or abating air pollution that exists when this subchapter takes effect and preventing new air pollution under a program which shall be consistent with the declaration of policy stated in § 8-4-301 and with this subchapter.

History. Acts 1949, No. 472, [Part 2], § 2, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1932.

8-4-303. Definitions.

As used in this subchapter:

- (1) “Air-cleaning device” means any method, process, or equipment which removes, reduces, or renders less noxious air contaminants discharged into the atmosphere;
- (2) “Air contaminant” means any solid, liquid, gas, or vapor or any combination thereof;
- (3) “Air contamination” means the presence in the outdoor atmosphere of one (1) or more air contaminants that contribute to a condition of air pollution;
- (4) “Air contamination source” means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who owns or operates the building, premises, or other property in, at, or on which such source is located or the facility, equipment, or other property by which the emission is caused or from which the emission comes;
- (5) “Air pollution” means the presence in the outdoor atmosphere of one (1) or more air contaminants in quantities, of characteristics, and of a duration that are materially injurious or can be reasonably expected to become materially injurious to human, plant, or animal life or to property, or that unreasonably interfere with enjoyment of life or use of property throughout the state or throughout the area of the state as shall be affected thereby;
- (6) “Area of the state” means any city or county, or portion thereof, or other substantial geographical area of the state as may be designated by the Arkansas Pollution Control and Ecology Commission;

(7) “Commission” means the Arkansas Pollution Control and Ecology Commission;

(8) “Department” means the Arkansas Department of Environmental Quality or its successor;

(9) “Director” means the Director of the Arkansas Department of Environmental Quality or its successor;

(10) “Major source construction” means the construction of a new major stationary source or a major modification of an existing major stationary source as the terms “major stationary source” and “major modification” are defined in 40 C.F.R. § 51.165, if applicable, or 40 C.F.R. § 51.166, as they existed on July 1, 2012;

(11) “NAAQS state implementation plan” means a state implementation plan that specifies measures to be used in the implementation of the state’s duties under 42 U.S.C. § 7410, for the attainment and maintenance of a specified National Ambient Air Quality Standard;

(12) “National Ambient Air Quality Standard” or “NAAQS” means a national primary or secondary ambient air quality standard established under Title I of the Clean Air Act, 42 U.S.C. § 7401 et seq., and 40 C.F.R. Part 50;

(13) “Person” means any individual, partnership, firm, company, public or private corporation, association, joint-stock company, trust, estate, political subdivision, or any agency, board, department, or bureau of the state, or any other legal entity whatever that is recognized by law as the subject of rights and duties; and

(14) “State implementation plan” means a plan that specifies measures to be used in the implementation of the state’s duties under the Clean Air Act, 42 U.S.C. § 7401 et seq., and that is developed by the department and submitted to the United States Environmental Protection Agency for review and approval.

History. Acts 1949, No. 472, [Part 2], § 3, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1933; Acts 1997, No. 1219, § 6; 1999, No. 1164, § 30; 2013, No. 1302, § 1; 2017, No. 455, § 1.

Amendments. The 2013 amendment added present (10) through (12) and (14).

The 2017 amendment substituted “duties under 42 U.S.C. § 7410” for “duties under the Clean Air Act, 42 U.S.C. § 7401 et seq.” in (11).

CASE NOTES

Air Pollution.

Pursuant to § 8-4-229(c), the organizations failed to meet their burden of showing that the Arkansas Pollution Control and Ecology Commission’s decision affirming the issuance of air and hazardous-waste permits for the construction of a facility to dispose of chemical weapons was erroneous because they failed to show that the issuance of the permits for the

facility would cause air pollution, as defined in this section; thus, the Commission’s decision to issue the permits was supported by substantial evidence and was proper. *Pine Bluff for Safe Disposal v. Ark. Pollution Control & Ecology Comm’n*, 354 Ark. 563, 127 S.W.3d 509 (2003).

Cited: *Bryant v. Mathis*, 310 Ark. 737, 839 S.W.2d 528 (1992).

8-4-304. Applicability of water pollution provisions.

All provisions of §§ 8-4-101 et seq. and 8-4-201 et seq. relating to water pollution shall apply to this subchapter unless manifestly inconsistent therewith, including, but not limited to, the provisions of §§ 8-4-205, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229 relating to hearings before the Arkansas Pollution Control and Ecology Commission, notice, right to appeal, and procedure, and § 8-4-230 relating to variances and interim authority.

History. Acts 1949, No. 472, [Part 2], A.S.A. 1947, § 82-1940; Acts 1995, No. § 10, as added by Acts 1965, No. 183, § 7; 943, § 2.

CASE NOTES

In General.

As the agency charged with administering the Water and Air Pollution Control Act, the Arkansas Pollution Control and Ecology Commission is given authority to issue, modify, and revoke permits regulat-

ing the emission of air pollutants under § 8-4-203 and this section. *Enviroclean, Inc. v. Ark. Pollution Control & Ecology Comm'n*, 314 Ark. 98, 858 S.W.2d 116 (1993).

8-4-305. Exceptions.

The provisions of this subchapter do not apply to:

- (1) Agricultural operations in the growing or harvesting of crops and the raising of fowl or animals;
- (2) Use of equipment in agricultural operations in the growing of crops or the raising of fowl or animals;
- (3) Barbecue equipment or outdoor fireplaces used in connection with any residence;
- (4) Land clearing operations or land grading;
- (5) Road construction operations and the use of mobile and portable equipment and machinery incident thereto;
- (6) Incinerators and heating equipment in or used in connection with residences used exclusively as dwellings for not more than four (4) families;
- (7) Fires set or permitted by any public officer, board, council, or commission when the fire is set or permission to burn is given in the performance of the duty of the officer for the purpose of weed abatement, the prevention or elimination of a fire hazard, or the instruction of employees in the methods of fire fighting, which is necessary in the opinion of the officer, or from fires set pursuant to permit for the purpose of instruction of employees of private industrial concerns in methods of fire fighting, or for civil defense instruction; or
- (8)(A) Unless prohibited by municipal or county ordinance, open fires used at a construction site only for the purpose of warming persons on the site during cold weather.
 - (B) Such fires:
 - (i) Shall be fueled only by wood or wood products;

- (ii) Must be controlled to the extent necessary to prevent a fire hazard or local nuisance; and
- (iii)(a) Must be confined within a container made of nonflammable material.
- (b) The container shall not exceed thirty inches (30") in width and thirty inches (30") in length.

History. Acts 1949, No. 472, [Part 2], A.S.A. 1947, § 82-1934; Acts 1997, No. § 4, as added by Acts 1965, No. 183, § 7; 259, § 1.

CASE NOTES

Growing or Harvesting of Crops.

The chancellor did not err in not finding the lumber company exempt under this section since the milling operation was

not the "growing or harvesting of crops." *J.W. Black Lumber Co. v. Ark. Dep't of Pollution Control & Ecology*, 290 Ark. 170, 717 S.W.2d 807 (1986).

8-4-306. Political subdivisions preempted — Exception.

(a) In order to avoid conflicting and overlapping jurisdiction, it is the intention of this chapter to occupy, by preemption, the field of control and abatement of air pollution and contamination and no political subdivision of this state shall enact or enforce laws, ordinances, resolutions, rules, or regulations in this field.

(b) Notwithstanding subsection (a) of this section, any political subdivision of this state may enact and enforce laws, ordinances, resolutions, rules, or regulations for the purpose of prohibiting burning in the open or in a receptacle having no means for significantly controlling the fuel/air ratio.

(c) Nothing in this chapter shall be construed to prevent private actions under existing laws.

History. Acts 1949, No. 472, [Part 2], A.S.A. 1947, § 82-1941; Acts 1989, No. § 12, as added by Acts 1965, No. 183, § 7; 765, § 1.

8-4-307. Private rights unchanged.

(a) Persons other than the state or the Arkansas Department of Environmental Quality shall not acquire actionable right by virtue of this subchapter. The basis for proceedings that result from violation of any standard, rule, or regulation promulgated by the Arkansas Pollution Control and Ecology Commission shall inure solely to and shall be for the benefit of the people of the state generally, and it is not intended to create in any way new rights or to enlarge existing rights or to abrogate existing private rights.

(b) A determination by the department that air pollution or air contamination exists or that any standard, rule, or regulation has been violated, whether or not a proceeding or action is brought by the state, shall not create, by reason thereof, any presumption of law or finding of fact that shall inure to or be for the benefit of any person other than the state.

History. Acts 1949, No. 472, [Part 2], A.S.A. 1947, § 82-1943; Acts 1997, No. § 14, as added by Acts 1965, No. 183, § 7; 1219, § 6.

8-4-308. Industrial secrets confidential.

(a)(1)(A) Any information that constitutes a trade secret under § 4-75-601 et seq. that is obtained by the Arkansas Department of Environmental Quality or the Arkansas Pollution Control and Ecology Commission or its employees in the administration of this chapter shall be kept confidential, except for emission data that is submitted to the state, local agency, or the United States Environmental Protection Agency, which is otherwise obtained by any of those agencies pursuant to the Clean Air Act.

(B) Only such emission data is to be publicly available.

(2)(A) The manner and rate of operation of the source, if such information is a trade secret, shall be kept confidential.

(B) Provided, that the identity, amount, frequency, and concentration of the emissions is publicly available.

(b) Any violation of this section shall be unlawful and constitutes a misdemeanor.

History. Acts 1949, No. 472, [Part 2], § 7, as added by Acts 1965, No. 183, § 7; 1983, No. 657, § 1; 1985, No. 763, § 1; A.S.A. 1947, § 82-1937; Acts 1995, No. 907, § 1; 1997, No. 1219, § 6.

U.S. Code. The Clean Air Act, referred to in this section, is codified primarily as 42 U.S.C. § 7401 et seq.

Cross References. Misdemeanors, § 5-1-107.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Access to Public Records under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.

8-4-309. Construction limited — Exception.

(a) Nothing contained in this subchapter shall be construed as amending or repealing § 20-21-201 et seq. concerning the control of radiation or as granting to the Arkansas Department of Environmental Quality or the Arkansas Pollution Control and Ecology Commission any jurisdiction or authority with respect to air conditions existing solely within the property boundaries of any plant, works, or shop or with respect to employer-employee relationships as to health and safety hazards.

(b) Notwithstanding the preceding limitation, the department and the commission shall have jurisdiction and authority over air conditions associated with the removal, encapsulation, enclosure, transportation, or disposal of asbestos-containing material regardless of whether such removal, encapsulation, enclosure, transportation, or disposal is conducted within the property boundaries of any plant, works, or shop.

History. Acts 1949, No. 472, [Part 2], A.S.A. 1947, § 82-1942; Acts 1989, No. § 13, as added by Acts 1965, No. 183, § 7; 559, § 1; 1997, No. 1219, § 6.

8-4-310. Unlawful actions.

(a) It shall be unlawful and constitute a misdemeanor:

(1) To knowingly cause air pollution as defined in § 8-4-303;

(2) To construct, install, use, or operate any source capable of emitting air contaminants without having first obtained a permit to do so, if required by the regulations of the Arkansas Pollution Control and Ecology Commission, or to do so contrary to the provisions of any permit issued by the Arkansas Department of Environmental Quality or after any such permit has been suspended or revoked; or

(3) To violate any rule, regulation, or order of the commission issued pursuant to this chapter.

(b) The liabilities imposed for violation of subdivisions (a)(1)-(3) of this section or any other provision of this chapter shall not apply with respect to any unintended violation caused by war, strike, riot, or other catastrophe, or accidental breakdown of equipment if promptly repaired.

History. Acts 1949, No. 472, [Part 2], § 8, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1938; Acts 1997, No. 1219, § 6.

Cross References. Misdemeanors, § 5-1-107.

CASE NOTES

Violation.

Where a corporation with an incinerator permit transferred all of its stock to a second corporation, there was substantial evidence to support the Arkansas Pollution Control and Ecology Commission's

conclusion that the first corporation thereby transferred its permitted facility to the second corporation, a transfer prohibited by the permit. *Enviroclean, Inc. v. Ark. Pollution Control & Ecology Comm'n*, 314 Ark. 98, 858 S.W.2d 116 (1993).

8-4-311. Powers generally.

(a) The Arkansas Department of Environmental Quality or its successor shall have the power to:

(1) Develop and effectuate a comprehensive program for the prevention and control of all sources of pollution of the air of this state;

(2) Advise, consult, and cooperate with other agencies of the state, political subdivisions, industries, other states, the United States Government, and with affected groups in the furtherance of the purposes of this subchapter;

(3) Encourage and conduct studies, investigations, and research relating to air pollution and its causes, prevention, control, and abatement as it may deem advisable and necessary;

(4) Collect and disseminate information relative to air pollution and its prevention and control;

(5) Consider complaints and make investigations;

(6) Encourage voluntary cooperation by the people, municipalities, counties, industries, and others in preserving and restoring the purity of the air within the state;

(7) Administer and enforce all laws and regulations relating to pollution of the air;

(8) Represent the state in all matters pertaining to plans, procedures, or negotiations for interstate compacts in relation to air pollution control;

(9)(A) Cooperate with and receive moneys from the United States Government or any other source for the study and control of air pollution.

(B) The department is designated as the official state air pollution control agency for such purposes;

(10) Make, issue, modify, revoke, and enforce orders prohibiting, controlling, or abating air pollution, and requiring the adoption of remedial measures to prevent, control, or abate air pollution;

(11) Institute court proceedings to compel compliance with the provisions of this chapter and rules, regulations, and orders issued pursuant to this chapter;

(12) Exercise all of the powers in the control of air pollution granted to the department for the control of water pollution under §§ 8-4-101 — 8-4-106 and 8-4-201 — 8-4-229; and

(13) Develop and implement state implementation plans provided that the Arkansas Pollution Control and Ecology Commission shall retain all powers and duties regarding promulgation of rules and regulations under this chapter.

(b) The commission shall have the power to:

(1)(A) Promulgate rules and regulations for implementing the substantive statutes charged to the department for administration.

(B) In promulgation of such rules and regulations, prior to the submittal to public comment and review of any rule, regulation, or change to any rule or regulation that is more stringent than federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule or regulation on the people of the State of Arkansas, including those entities that will be subject to the regulation.

(C) The commission shall promptly initiate rulemaking to further implement the analysis required under subdivision (b)(1)(B) of this section.

(D) The extent of the analysis required under subdivision (b)(1)(B) of this section shall be defined in the commission's rulemaking required under subdivision (b)(1)(C) of this section. It will include a written report that shall be available for public review along with the proposed rule in the public comment period.

(E) Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent regulation;

(2) Promulgate rules, regulations, and procedures not otherwise governed by applicable law that the commission deems necessary to secure public participation in environmental decision-making processes;

(3) Promulgate rules and regulations governing administrative procedures for challenging or contesting department actions;

(4) In the case of permitting or grants decisions, provide the right to appeal a permitting or grants decision rendered by the Director of the Arkansas Department of Environmental Quality or his or her delegate;

(5) In the case of an administrative enforcement or emergency action, providing the right to contest any such action initiated by the director;

(6) Instruct the director to prepare such reports or perform such studies as will advance the cause of environmental protection in the state;

(7) Make recommendations to the director regarding overall policy and administration of the department, provided, however, that the director shall always remain within the plenary authority of the Governor;

(8) Upon a majority vote, initiate review of any director's decision;

(9) Adopt, after notice and public hearing, reasonable and nondiscriminatory rules and regulations requiring the registration of and the filing of reports by persons engaged in operations that may result in air pollution;

(10)(A) Adopt, after notice and public hearing, reasonable and nondiscriminatory rules and regulations, including requiring a permit or other regulatory authorization from the department, before any equipment causing the issuance of air contaminants may be built, erected, altered, replaced, used, or operated, except in the case of repairs or maintenance of equipment for which a permit has been previously used, and revoke or modify any permit issued under this chapter or deny any permit when it is necessary, in the opinion of the department, to prevent, control, or abate air pollution.

(B) A permit shall be issued for the operation or use of any equipment or any facility in existence upon the effective date of any rule or regulation requiring a permit if proper application is made for the permit.

(C) No such permit shall be modified or revoked without prior notice and hearing as provided in this section.

(D) Any person that is denied a permit by the department or that has such permit revoked or modified shall be afforded an opportunity for a hearing in connection therewith upon written application made within thirty (30) days after service of notice of such denial, revocation, or modification.

(E) The operation of any existing equipment or facility for which a proper permit application has been made shall not be interrupted pending final action thereon.

(F)(i) An applicant or permit holder that has had a complete application for a permit or for a modification of a permit pending longer than the time specified in the state regulations promulgated pursuant to Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. § 7661 et seq., or any person that participated in the public participation process, and any other person that could obtain judicial review of such actions under state laws, may petition the commission for relief from department inaction.

(ii) The commission will either deny or grant the petition within forty-five (45) days of its submittal.

(iii) For the purposes of judicial review, either a commission denial or the failure of the department to render a final decision within thirty (30) days after the commission has granted a petition shall constitute final agency action;

(11)(A) Establish through its rulemaking authority, either alone or in conjunction with the appropriate state or local agencies, a system for the banking and trading of air emissions designed to maintain both the state's attainment status with the national ambient air quality standards mandated by the Clean Air Act and the overall air quality of the state.

(B) The commission may consider differential valuation of emission credits as necessary to achieve primary and secondary national ambient air quality standards, and may consider establishing credits for air pollutants other than those designated as criteria air pollutants by the United States Environmental Protection Agency.

(C) Any regulation proposed pursuant to this authorization shall be reported to the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor prior to its final promulgation; and

(12) In the case of a state implementation plan, provide the right to appeal a final decision rendered by the director or his or her delegate under § 8-4-317.

History. Acts 1949, No. 472, [Part 2], § 5, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1935; Acts 1993, No. 994, § 1; 1995, No. 895, § 4; 1997, No. 179, § 1; 1997, No. 1219, § 6; 1999, No. 1164, § 31; 2013, No. 1302, §§ 2, 3.

Amendments. The 2013 amendment added (a)(13) and (b)(12).

U.S. Code. The Clean Air Act referred to in this section is codified primarily as 42 U.S.C. § 7401 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268.

CASE NOTES

Cited: United States v. Vertac Chem. Corp., 489 F. Supp. 870 (E.D. Ark. 1980).

8-4-312. Factors in exercise of powers.

In exercising their powers and responsibilities under this chapter, the Arkansas Department of Environmental Quality and the Arkansas Pollution Control and Ecology Commission shall take into account and give consideration to the following factors:

- (1) The quantity and characteristics of air contaminants and the duration of their presence in the atmosphere that may cause air pollution in a particular area of the state;
- (2) Existing physical conditions and topography;
- (3) Prevailing wind directions and velocities;
- (4) Temperatures and temperature-inversion periods, humidity, and other atmospheric conditions;
- (5) Possible chemical reactions between air contaminants or between such air contaminants and air gases, moisture, or sunlight;
- (6) The predominant character of development of the area of the state such as residential, highly developed industrial, commercial, or other characteristics;
- (7) Availability of air-cleaning devices;
- (8) Economic feasibility of air-cleaning devices;
- (9) Effect on normal human health of particular air contaminants;
- (10) Effect on efficiency of industrial operation resulting from use of air-cleaning devices;
- (11) The extent of danger to property in the area reasonably to be expected from any particular air contaminant;
- (12) Interference with reasonable enjoyment of life by persons in the area and conduct of established enterprises that can reasonably be expected from air contaminants;
- (13) The volume of air contaminants emitted from a particular class of air contamination sources;
- (14) The economic and industrial development of the state and the social and economic value of the air contamination sources;
- (15) The maintenance of public enjoyment of the state's natural resources; and
- (16) Other factors that the department or the commission may find applicable.

History. Acts 1949, No. 472, [Part 2], A.S.A. 1947, § 82-1936; Acts 1997, No. § 6, as added by Acts 1965, No. 183, § 7; 1219, § 6.

CASE NOTES

Applicability.

The Arkansas Pollution Control and Ecology Commission is under a mandate to consider the factors set out in this section in adopting its rules and regulations, but there is nothing in the Water

and Air Pollution Control Act suggesting the legislature intended these factors to be applied in each specific instance; instead, these factors were intended to have a general application, to apply to classes,

rather than to individual cases. *J.W. Black Lumber Co. v. Ark. Dep't of Pollution Control & Ecology*, 290 Ark. 170, 717 S.W.2d 807 (1986).

8-4-313. Variance from regulations.

(a)(1) The Arkansas Pollution Control and Ecology Commission may grant specific variances from the particular requirements of any rule, regulation, or general order to such specific persons or class of persons or such specific air contamination source, upon such conditions as it may deem necessary to protect the public health and welfare, if it finds that strict compliance with the rule, regulation, or general order is inappropriate because of conditions beyond the control of the person granted the variance or because of special circumstances that would render strict compliance unreasonable, unduly burdensome, or impractical due to special physical conditions or causes or because strict compliance would result in substantial curtailment or closing down of a business, plant, or operation or because no alternative facility or method of handling is yet available.

(2) Variances may be limited in time.

(3) In determining whether or not a variance shall be granted, the commission shall weigh the equities involved and the relative advantages and disadvantages to the residents and the occupation and activity affected.

(b)(1) Any person seeking a variance shall do so by filing a petition for a variance with the Director of the Arkansas Department of Environmental Quality.

(2)(A) The director shall promptly investigate the petition and make a recommendation to the commission as to the disposition thereof.

(B)(i) If the recommendation is against the granting of the variance, a hearing shall be held thereon after not less than ten (10) days, prior to notice to the petitioner.

(ii) If the recommendation of the director is for the granting of a variance, the commission may do so without a hearing. However, upon the petition of any person aggrieved by the granting of a variance, a public hearing shall be held.

(c)(1) A variance granted may be revoked or modified by the commission after a public hearing held upon not less than ten (10) days' prior notice.

(2) The notice shall be served upon all persons known to the commission that will be subjected to greater restrictions if the variance is revoked or modified, that are likely to be affected, or that have filed with the commission a written request for such notification.

History. Acts 1949, No. 472, [Part 2], A.S.A. 1947, § 82-1939; Acts 1997, No. § 9, as added by Acts 1965, No. 183, § 7; 1219, § 6.

CASE NOTES

Cited: Ark. Comm'n of Pollution Control & Ecology v. Husky Indus., Inc., 293 Ark. 249, 737 S.W.2d 157 (1987).

8-4-314. Compliance Advisory Panel — Small Business Stationary Source Technical and Environmental Compliance Assistance Program — Marketing Recyclables Program.

(a) There is created a Compliance Advisory Panel composed of nine (9) individuals.

(b) The panel shall consist of:

(1) Two (2) members appointed by the Governor to represent the general public who are not:

(A) Owners or representatives of owners of small business stationary sources; or

(B) Owners or representatives of owners of a recycling company or the marketing and recyclable community;

(2) Three (3) members selected by the Speaker of the House of Representatives:

(A) One (1) member who is an owner or who represents an owner of small business stationary sources; and

(B) Two (2) members who are owners or representatives of a small business recycling company or the marketing and recyclable community;

(3) Three (3) members selected by the President Pro Tempore of the Senate:

(A) One (1) member who is an owner or who represents an owner of small business stationary sources; and

(B) Two (2) members who are owners or representatives of a small business recycling company or the marketing and recyclable community; and

(4) One (1) member selected by the Director of the Arkansas Department of Environmental Quality who shall serve as a nonvoting member except when his or her vote is needed to break a tie vote.

(c)(1) Each member shall serve a term of four (4) years.

(2) In the event of a vacancy in the membership of the panel concerning a member selected by the General Assembly or the Governor, the Governor shall appoint a person meeting the applicable eligibility requirements of the vacated position to fill the vacancy for the remainder of the unexpired term.

(3) In the event of a vacancy in the membership of the panel concerning the member appointed by the director, the director shall appoint a person to fill the vacancy for the remainder of the unexpired term.

(d)(1)(A) The panel shall hold at least one (1) regular meeting each calendar year quarter at a time and place determined by the panel.

(B) At least one (1) meeting each calendar year shall be dedicated to small business stationary sources, with an emphasis on air quality issues.

(2) Special meetings may be called at the discretion of the chair.

(e)(1) The panel shall select a chair by a majority vote of the membership.

(2) Each chair shall serve a term of one (1) year.

(f) Five (5) members of the panel shall constitute a quorum to transact business.

(g) The members of the panel may receive expense reimbursement in accordance with § 25-16-901 et seq.

(h)(1) If a vacancy occurs in an appointed position for any reason, the vacancy shall be filled by appointment by the official who made the appointment.

(2) The new appointee shall serve for the remainder of the unexpired term.

(i) The panel shall perform the following duties for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program:

(1) Render advisory opinions concerning the effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, difficulties encountered, and degree and severity of enforcement;

(2) Make periodic reports to the Administrator of the United States Environmental Protection Agency concerning the compliance of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act of 1980, the Regulatory Flexibility Act, 5 U.S.C. § 601 et seq., and the Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412, and 42 U.S.C. § 1988;

(3) Review information for small business stationary sources to assure such information is understandable by the layperson; and

(4) Have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(j) The panel shall perform the following duties for the Marketing Recyclables Program:

(1) Develop a program for the coordination of all existing marketing programs for recyclables;

(2) Work with existing industry to encourage the use of recyclables in their manufacturing processes;

(3) Recruit new industries that use recyclables in their manufacturing processes;

(4) Maintain current information on market prices and trends; and

(5) Advise and assist state and local officials in all areas of recyclables marketing.

History. Acts 1993, No. 242, § 2; 1993, No. 251, § 2; 1997, No. 250, § 45; 1999, No. 1164, §§ 32, 33; 2001, No. 1288, § 2; 2017, No. 1067, § 1.

Publisher's Notes. Acts 1993, Nos. 242 and 251, § 1, provided: "In order to comply with Section 507 of the federal Clean Air Act, this statute is enacted. The program establishes a compliance advisory panel for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program. This program is to be administered by the Arkansas Department of Pollution Control and Ecology and is intended to help

eligible small businesses understand and comply with the federal Clean Air Act."

Amendments. The 2017 amendment added "Marketing Recyclables Program" to the section heading; and rewrote the section.

U.S. Code. The Paperwork Reduction Act of 1980, referred to in this section, is codified primarily as 44 U.S.C. § 3501 et seq.

The Small Business Stationary Source Technical and Environmental Compliance Assistance Program, referred to in this section, was created pursuant to 42 U.S.C. § 7401 et seq.

8-4-315. Permits.

The Arkansas Department of Environmental Quality is authorized to require, issue, and enforce operating permits for major sources in satisfaction of Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. § 7661 et seq.

History. Acts 1995, No. 384, § 11; 1997, No. 310, § 2; 1999, No. 1164, § 34.

A.C.R.C. Notes. Acts 1995, No. 384, § 11, provided: "Permit transfers. To the extent consistent with federal requirements, permits issued pursuant to this

subchapter may be transferred in accordance with the procedures set out in § 8-4-203(f)."

Acts 1997, No. 310, § 2 has been deemed to amend Acts 1995, No. 384, § 11.

8-4-316. Open burning of storm debris.

(a) Unless otherwise prohibited by federal law, open burning may be used by county governments to dispose of vegetative storm debris in counties that have been declared disaster areas by a county under § 12-75-108, by the state under § 12-75-107, or federal authorities under federal law authorized to make the declaration.

(b)(1) Open burning shall be:

(A) Limited to no more than four (4) sites per county as designated by the county judge and pre-authorized by the Arkansas Department of Environmental Quality; and

(B) Reported in writing to the department at least three (3) days before the commencement of any open burning, unless the reporting is waived by the Director of the Arkansas Department of Environmental Quality.

(2)(A) For an initial or subsequent request for open burning, the department shall consider a maximum of four (4) sites pre-authorized for open burning if the department receives a signed letter from the county judge certifying that the open burning sites pre-authorized under subdivision (b)(1) of this section have not been materially altered since the initial request.

(B) If the director determines that the scope of the disaster warrants additional open burning sites, then the director may authorize additional open burning sites.

(3)(A) The open burning shall be performed during daylight hours on Monday through Friday.

(B) However, open burning shall not occur on a state or federal holiday.

(4) Open burning shall be completed within one hundred twenty (120) days of designation of the county as a disaster area unless:

(A)(i) At least ten (10) calendar days before the expiration of the period of time under this subdivision (b)(4), the county judge of the affected disaster area makes a written request to the director for an extension of time.

(ii) An extension made under subdivision (b)(4)(A)(i) of this section shall include a detailed explanation of the reason for the request for an extension of time to complete the open burning of the vegetative storm debris;

(B) The director determines that the scope of the disaster warrants an extension; and

(C) The total amount of time extended does not exceed two hundred forty (240) calendar days from the original designation of the county as a disaster area.

(5) Open burning shall be conducted in a manner so as not to create a nuisance to surrounding communities or citizenry.

(6) Adequate firefighting personnel shall be available to respond to an emergency at any designated open burning site.

(7) Open burning shall not be conducted within:

(A) Five hundred feet (500') of a residence unless the owner of the residence has given written permission for the open burning; or

(B) One thousand feet (1,000') of a school.

(8) Open burning may be conducted if:

(A) The county is in attainment of all national ambient air quality standards; and

(B) A burn ban is not in effect for the county.

(c) The director may require that:

(1) A designated open burning site be relocated; and

(2) Any or all open burning allowed under this section be stopped in response to actual or potential violations of state or federal air quality standards in the impacted areas.

(d) The open burning of nonvegetative storm debris, including, but not limited to, tires, lumber, construction debris, demolished structures, household wastes, and trade wastes shall not be permitted under this section.

(e) County governments open burning vegetative storm debris under this section shall comply with all other applicable federal, state, or local statutes, rules, regulations, ordinances, and orders.

(f) The department may recommend alternative methods of vegetative storm debris disposal including the use of air curtain incinerators or composting to the extent allowed under federal law.

(g)(1) A county judge shall not obligate state or federal funds for open burning under this section if the county judge has declared the emergency under § 12-75-108.

(2) However, a county judge may be reimbursed from state or federal funds for the cost of the open burning if the director determines that reimbursement is appropriate.

History. Acts 2005, No. 944, § 1; 2011, No. 10, § 1; 2017, No. 330, § 1.

Amendments. The 2017 amendment substituted “Open burning” for “Burning” in the section heading; redesignated and rewrote former (a) as present (a) and (b); redesignated former (b) through (d) as

present (c) through (e); substituted “A designated open burning site” for “Designated burning sites” in present (c)(1); inserted “open” in present (c)(2) and (e); added (f) and (g); and made stylistic changes.

8-4-317. State implementation plans generally.

(a) In developing and implementing a state implementation plan, the Arkansas Department of Environmental Quality shall consider and take into account the factors specified in § 8-4-312 and the Clean Air Act, 42 U.S.C. § 7401 et seq., as applicable.

(b)(1)(A) Whenever the department proposes to finalize a state implementation plan submittal for review and approval by the United States Environmental Protection Agency, it shall cause notice of its proposed action to be published in a newspaper of general circulation in the state.

(B) The notice required under subdivision (b)(1)(A) of this section shall afford any interested party at least thirty (30) calendar days in which to submit comments on the proposed state implementation plan submittal in its entirety.

(C)(i) In the case of any emission limit, work practice or operational standard, environmental standard, analytical method, air dispersion modeling requirement, or monitoring requirement that is incorporated as an element of the proposed state implementation plan submittal, the record of the proposed action shall include a written explanation of the rationale for the proposal, demonstrating the reasoned consideration of the factors in § 8-4-312 as applicable, the need for each measure in attaining or maintaining the National Ambient Air Quality Standards as applicable, and that any requirements or standards are based upon generally accepted scientific knowledge and engineering practices.

(ii) For any standard or requirement that is identical to the applicable Arkansas Pollution Control and Ecology Commission regulation or federal regulation, the demonstration required under subdivision (b)(1)(C)(i) of this section may be satisfied by reference to the regulation. In all other cases, the department shall provide its own justification with appropriate reference to the scientific and engineering literature considered or the written studies conducted by the department.

(2)(A) At the conclusion of the public comment period and before transmittal to the Governor for submittal to the United States Environmental Protection Agency, the department shall provide written notice of its final decision regarding the state implementation plan submittal to all persons who submitted public comments.

(B)(i) The department’s final decision shall include a response to each issue raised in any public comments received during the public comment period. The response shall manifest reasoned consideration of the issues raised by the public comments and shall be supported by appropriate legal, scientific, or practical reasons for accepting or rejecting the substance of the comment in the department’s final decision.

(ii) For the purposes of this section, response to comments by the department should serve the roles of both developing the record for possible judicial review of a state implementation plan decision and serving as a record for the public’s review of the department’s technical and legal interpretations on long-range regulatory issues.

(iii) This section does not limit the department’s authority to raise all relevant issues of regulatory concern upon adjudicatory review by the commission of a particular state implementation plan decision.

(c)(1) Only those persons that submit comments on the record during the public comment period have standing to appeal the final decision of the department to the commission upon written application made within thirty (30) days after service of the notice under subdivision (b)(2)(A) of this section.

(2) An appeal under subdivision (c)(1) of this section shall be processed as a permit appeal under § 8-4-205. However, the decision of the Director of the Arkansas Department of Environmental Quality shall remain in effect during the appeal.

History. Acts 2013, No. 1302, § 4; 2017, No. 455, § 2. cable Arkansas Pollution Control and Ecology Commission regulation or federal regulation” for “an applicable federal regulation” in the first sentence of (b)(1)(C)(ii).

Amendments. The 2017 amendment inserted “as applicable” near the end of (b)(1)(C)(i); and substituted “the appli-

8-4-318. National Ambient Air Quality Standards implementation.

(a)(1) The Arkansas Department of Environmental Quality shall develop NAAQS state implementation plans.

(2) Each NAAQS state implementation plan shall include the measures necessary for the attainment and maintenance of the National Ambient Air Quality Standard in each air quality control region or portion of an air quality control region within the state.

(b)(1) Except with regard to permitting decisions for major source construction under Part C or D of Title I of the Clean Air Act, 42 U.S.C. § 7470 et seq. or 42 U.S.C. § 7501 et seq., National Ambient Air Quality Standards are not effective until adopted by the Arkansas Pollution Control and Ecology Commission under § 8-4-311(b).

(2) Except as required for the permitting of major source construction under Part C or D of Title I of the Clean Air Act, 42 U.S.C. § 7470 et seq. or 42 U.S.C. § 7501 et seq., or otherwise voluntarily proposed and agreed to by the owner or operator of a stationary source, the department shall not mandate for any stationary source measures for the attainment and maintenance of a National Ambient Air Quality Standard until such measures are included in the applicable NAAQS state implementation plan and the NAAQS state implementation plan has been submitted to the United States Environmental Protection Agency. However, this subdivision (b)(2) does not limit or delay the effectiveness of any applicable emission limit or standard promulgated by the United States Environmental Protection Agency under §§ 111, 112, or 129 of the Clean Air Act, 42 U.S.C. § 7411, 42 U.S.C. § 7412, or 42 U.S.C. § 7429.

(3) Unless otherwise voluntarily proposed and agreed to by the owner or operator of a stationary source, the department shall not require or consider air dispersion modeling of an air contaminant for which a National Ambient Air Quality Standard has been established in air permitting decisions for stationary sources except:

(A) As required by Part C of Title I of the Clean Air Act, 42 U.S.C. § 7470 et seq., and the federal regulations promulgated thereto, for the permitting of major source construction;

(B) If necessary in the judgment of the department, with respect to permitting of a temporary source under 42 U.S.C. § 7661c(e); or

(C) Pollutant-specific or facility-specific air dispersion modeling explicitly required by an applicable NAAQS state implementation plan submitted to the United States Environmental Protection Agency.

(c) This section does not prohibit the department from conducting and considering air dispersion modeling as necessary for the:

- (1) Development of a state implementation plan; or
- (2) Development of a general permit under § 8-4-203.

History. Acts 2013, No. 1302, § 5.

SUBCHAPTER 4 — LEAD-BASED PAINT-HAZARD ACT

SECTION.

8-4-401 — 8-4-409. [Repealed.]

Publisher's Notes. For current law, see the "Arkansas Lead-Based Paint-Hazard Act of 2011", § 20-27-2501 et seq.

8-4-401 — 8-4-409. [Repealed.]

Publisher’s Notes. This subchapter, concerning the Lead-Based Paint-Hazard Act, was repealed by Acts 2011, No. 1011, § 2. The former subchapter was derived from the following sources:

- 8-4-401. Acts 1997, No. 309, § 1.
- 8-4-402. Acts 1997, No. 309, § 1; 1999, No. 1164, § 35.
- 8-4-403. Acts 1997, No. 309, § 1; 1999, No. 1164, §§ 36, 37.

- 8-4-404. Acts 1997, No. 309, § 1.
- 8-4-405. Acts 1997, No. 309, § 1.
- 8-4-406. Acts 1997, No. 309, § 1.
- 8-4-407. Acts 1997, No. 309, § 1.
- 8-4-408. Acts 1997, No. 309, § 1; 2009, No. 1199, § 5.
- 8-4-409. Acts 1997, No. 309, § 1; 1999, No. 53, § 1; 1999, No. 1164, § 38.

CHAPTER 5
WATER POLLUTION CONTROL FACILITIES

SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]
- 2. WASTEWATER TREATMENT PLANTS.
- 3. WATER POLLUTION CONTROL PROJECTS — GRANTS AND BONDS. [REPEALED.]
- 4. WATER POLLUTION CONTROL STATE GRANT ACT. [REPEALED.]
- 5. UNDERGROUND SALT WATER DISPOSAL SYSTEMS.
- 6. ARKANSAS PRIVATIZATION ACT.
- 7. CHRONIC NONCOMPLIANCE.
- 8. SMALL BUSINESS REVOLVING LOAN FUND.
- 9. LONG-TERM ENVIRONMENTAL PROJECTS.

SUBCHAPTER 1 — GENERAL PROVISIONS
[Reserved.]

SUBCHAPTER 2 — WASTEWATER TREATMENT PLANTS

SECTION.

- 8-5-201. Definitions.
- 8-5-202. Penalty and injunctions.
- 8-5-203. Unlawful actions.
- 8-5-204. Licensing committee.
- 8-5-205. Powers and duties generally.
- 8-5-206. Classification of wastewater treatment plants.

SECTION.

- 8-5-207. Operators to be licensed.
- 8-5-208. License requirements.
- 8-5-209. Fees — Wastewater Licensing Fund.

Publisher’s Notes. Acts 1997, No. 1219, § 1, provided: “Legislative intent. With Act 1230 of 1991, the General Assembly sought to delineate the respective responsibilities of the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Pollution Control & Ecology. Confusion on these issues in the public’s perception continues, however, primarily because of the similarity in the names of these entities. The purpose

of this Act is to achieve the legislative intent of Act 1230 of 1991 and to definitively assign the executive, adjudicatory, and rulemaking roles for the State’s regulatory functions concerning protection of the environment.”
Effective Dates. Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of

1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reim-

bursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 288, § 5: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of this act are of major importance to the state's best interest to have all revenues of the Department of Pollution Control and Ecology deposited into the State Treasury for better accountability of financial resources. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

8-5-201. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "Commission" means the Arkansas Pollution Control and Ecology Commission or its successor;
- (2) "Department" means the Arkansas Department of Environmental Quality or its successor;
- (3) "License" means a certificate of competency issued by the department to operators who have met the requirements of the licensing program;
- (4) "Licensing committee" means the committee of operators and technicians established in this subchapter to assist and advise the department in the examining and licensing of operators;
- (5)(A) "Operator" means any person who is in responsible charge of the operation of a wastewater treatment plant, in whole or in part, and who, during the performance of his or her regular duties, exercises individual judgment which directly or indirectly may affect the proper operation of the wastewater treatment plant.

- (B) "Operator" shall not be deemed to include an official solely exercising general administrative supervision; and
- (6) "Wastewater treatment plant" means any plant, disposal field, lagoon, pumping station, or other works:
- (A) That use chemical or biological processes for:
 - (i) Treating, stabilizing, or disposing of sewage, industrial wastewaters, or other wastewaters; or
 - (ii) The reduction and handling of sludge removed from such wastewater; and
 - (B) From which:
 - (i) A discharge to the waters of the state occurs; or
 - (ii) Municipal wastewater is land-applied.

History. Acts 1971, No. 211, § 2; A.S.A. 1947, § 82-1984; Acts 1997, No. 1219, § 7; 1999, No. 719, § 1; 1999, No. 1164, § 39.

8-5-202. Penalty and injunctions.

(a) A violation of any provision of this subchapter or of any rule or regulation issued pursuant to this subchapter shall constitute a misdemeanor and upon conviction shall be punishable as such. Each day's continuance of a violation shall constitute a separate offense.

(b) Any violation of this subchapter shall be subject to injunction proceedings brought by the Arkansas Department of Environmental Quality in a court of competent jurisdiction.

(c) A violation of any provision of this subchapter or of any rule or regulation promulgated under this subchapter is grounds for an administrative revocation or suspension of the operator's license by the department.

History. Acts 1971, No. 211, § 9; A.S.A. 1947, § 82-1991; Acts 1997, No. 1219, § 7; 2005, No. 729, § 1.

Cross References. Misdemeanors, § 5-1-107.

8-5-203. Unlawful actions.

It shall be unlawful for any municipality, governmental subdivision, public or private corporation, or other person to operate a public or private wastewater treatment plant unless the competency of the operator is duly licensed by the Arkansas Department of Environmental Quality under the provisions of this subchapter. It shall further be unlawful for any person to perform the duties of an operator of any such wastewater treatment plant without being duly licensed under this subchapter.

History. Acts 1971, No. 211, § 8; A.S.A. 1947, § 82-1990; Acts 1991, No. 1103, § 1; 1997, No. 1219, § 7.

8-5-204. Licensing committee.

(a)(1) There is created and established a licensing committee to advise and assist the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Environmental Quality in the administration of the licensing program.

(2) The committee shall be composed of eight (8) members:

(A) Five (5) members, to be appointed by the commission, of which three (3) members shall be active wastewater treatment plant operators licensed by the commission and two (2) members shall be employed by a private corporation or industry located in Arkansas and nominated at large by the corporations or industries for service on the committee;

(B) One (1) member, to be appointed by the commission, shall be an employee of a municipality operating a wastewater treatment plant who holds the position of chief administrative officer, city engineer, director of public utilities, or other equivalent position;

(C) One (1) member, to be appointed by the commission, shall be a faculty member of an accredited college, university, or professional school in this state whose major field is related to water resources or sanitary engineering; and

(D) One (1) member shall be the Director of the Arkansas Department of Environmental Quality or a qualified member of his or her staff who shall act as executive secretary of the committee.

(b)(1) In the event of a vacancy, a new member shall be appointed by the commission to serve out the unexpired term.

(2) No member shall serve more than two (2) consecutive three-year terms.

(c)(1) State agency members of the committee shall receive no additional salary or per diem for their services as members of the committee, but they may receive expense reimbursement in accordance with § 25-16-901 et seq.

(2) The members appointed by the commission may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1971, No. 211, § 6; A.S.A. 1997, No. 1219, § 7; 1999, No. 719, §§ 2, 1947, § 82-1988; Acts 1993, No. 556, § 1; 3; 1999, No. 1164, § 40. 1997, No. 250, § 46; 1997, No. 697, § 2;

8-5-205. Powers and duties generally.

(a) The Arkansas Department of Environmental Quality or its successor shall be charged with the responsibility of administering and enforcing this subchapter, with the advice and assistance of the licensing committee, and is given and charged with the following powers and duties:

(1) To conduct examinations for licensing, which shall be conducted at least annually and more frequently as the Arkansas Pollution Control and Ecology Commission shall deem necessary;

(2) To issue licenses to qualified wastewater treatment plant operators, to renew those licenses, and to suspend or revoke the licenses for cause, after due notice and hearing;

(3) To institute court proceedings to compel compliance with the provisions of this subchapter and the rules and regulations issued pursuant thereto; and

(4) To participate financially in programs sponsored by the Arkansas Water Environment Association, Inc. or its successor, provided that the participation shall not exceed the sum of one thousand dollars (\$1,000) per fiscal year.

(b)(1) The commission shall serve as the rulemaking and appointment authority for implementation of this subchapter.

(2) The commission's powers shall include:

(A) To adopt rules and regulations implementing and effectuating this subchapter as may be necessary for the administration and enforcement thereof;

(B) To make appointments to the committee in accordance with this subchapter; and

(C) To set reasonable licensure and examination fees to cover the costs of administration of this subchapter.

History. Acts 1971, No. 211, § 3; A.S.A. 1947, § 82-1985; Acts 1993, No. 556, § 2; 1997, No. 1219, § 7; 1999, No. 1164, § 41.

8-5-206. Classification of wastewater treatment plants.

(a) The Arkansas Pollution Control and Ecology Commission shall, through regulations, classify all wastewater treatment plants, taking into account:

(1) The size, type, and complexity of the wastewater treatment plant;

(2) The character and volume of wastewater treated;

(3) The population served;

(4) The skill, knowledge, and experience reasonably required to supervise the proper operation of the wastewater treatment plant; and

(5) Such other factors as the commission shall deem appropriate.

(b) The Arkansas Department of Environmental Quality shall license persons as to their qualifications to supervise successfully the proper operation of wastewater treatment plants within classifications based on the recommendations of the licensing committee.

History. Acts 1971, No. 211, § 5; A.S.A. 1947, § 82-1987; Acts 1997, No. 1219, § 7.

8-5-207. Operators to be licensed.

In order to safeguard the public health and protect the waters of this state from pollution, all operators in responsible charge of public or private wastewater treatment plants shall be duly licensed and certified as competent by the Arkansas Department of Environmental

Quality under the provisions of this subchapter and under such rules and regulations as the Arkansas Pollution Control and Ecology Commission may adopt, with the advice and assistance of the licensing committee, pursuant to the authority of this subchapter. All rules and regulations promulgated pursuant to this subchapter shall be reviewed by the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor.

History. Acts 1971, No. 211, § 1; A.S.A. 1947, § 82-1983; Acts 1991, No. 1103, § 2; 1997, No. 179, § 2; 1997, No. 1219, § 7.

8-5-208. License requirements.

(a) The Arkansas Department of Environmental Quality shall license and certify all applicants for licenses under this subchapter who satisfy the requirements of this subchapter and the rules and regulations issued pursuant to this subchapter. Licenses shall be granted according to the classification of wastewater treatment plants established under this subchapter. Licenses shall be valid for a period of two (2) years and shall be renewable upon application without examination.

(b) All operators of wastewater treatment plants within the state shall apply to the department for a license.

(c) In its discretion, the department may waive the requirements or any part of the requirements for formal examination of an applicant for license if the applicant holds a valid license or certificate from another state in which the requirements for license in the appropriate classification are at least equal to the requirements set forth in this subchapter and the rules and regulations issued pursuant to this subchapter.

History. Acts 1971, No. 211, § 4; A.S.A. 1947, § 82-1986; Acts 1997, No. 1219, § 7; 2005, No. 729, § 2; 2007, No. 544, § 1.

8-5-209. Fees — Wastewater Licensing Fund.

(a)(1) The Arkansas Pollution Control and Ecology Commission shall have the authority to set fees in an amount to cover the cost of the administration of this subchapter.

(2)(A) Licensing and examination fees shall be set forth in the regulation.

(B) However, the fees shall not exceed:

(i) A combined examination and license fee of forty dollars (\$40.00); and

(ii) An annual license renewal fee of twenty dollars (\$20.00).

(b) The Wastewater Licensing Fund is hereby established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State. All fees collected under the provisions of this

section shall be deposited into this fund and may be used only for the administration of this subchapter.

History. Acts 1971, No. 211, § 7; A.S.A. 1947, § 82-1989; Acts 1991, No. 1104, § 1; 1997, No. 288, § 1; 1997, No. 1219, § 7; 1999, No. 777, § 1.

Cross References. Wastewater Licensing Fund, § 19-5-1071.

SUBCHAPTER 3 — WATER POLLUTION CONTROL PROJECTS — GRANTS AND BONDS

SECTION.

8-5-301 — 8-5-319. [Repealed.]

Effective Dates. Acts 2003, No. 548, § 5: July 1, 2003. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that administration of the clean water fund is of critical importance to the citizens of Arkansas, that the fund may be administered more efficiently by an agency that specializes in the administration of numerous other revolving loan programs associated with environmental projects, and that the provisions of this act

are necessary to preserve and improve the efficient administration of these programs. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 2003."

Cross References. Municipal water and sewer revenue bonds issued to refund revenue bonds, § 14-72-101.

8-5-301 — 8-5-319. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2003, No. 548, § 4. The subchapter was derived from the following sources:

8-5-301. Acts 1971, No. 108, § 1; A.S.A. 1947, § 82-1914.

8-5-302. Acts 1971, No. 108, § 2; A.S.A. 1947, § 82-1914.1.

8-5-303. Acts 1971, No. 108, § 3; 1971, No. 544, § 1; A.S.A. 1947, § 82-1914.2.

8-5-304. Acts 1971, No. 108, § 4; A.S.A. 1947, § 82-1914.3.

8-5-305. Acts 1971, No. 108, § 5; 1975, No. 225, § 21; 1981, No. 425, § 20; A.S.A. 1947, § 82-1914.4.

8-5-306. Acts 1971, No. 108, § 6; A.S.A. 1947, § 82-1914.5.

8-5-307. Acts 1971, No. 108, § 7; 1975, No. 225, § 21; 1981, No. 425, § 20; A.S.A. 1947, § 82-1914.6.

8-5-308. Acts 1971, No. 108, § 8; A.S.A. 1947, § 82-1914.7.

8-5-309. Acts 1971, No. 108, § 9; A.S.A. 1947, § 82-1914.8.

8-5-310. Acts 1971, No. 108, § 10; A.S.A. 1947, § 82-1914.9.

8-5-311. Acts 1971, No. 108, § 11; A.S.A. 1947, § 82-1914.10.

8-5-312. Acts 1971, No. 108, § 12; A.S.A. 1947, § 82-1914.11.

8-5-313. Acts 1971, No. 108, § 13; A.S.A. 1947, § 82-1914.12.

8-5-314. Acts 1971, No. 108, § 14; A.S.A. 1947, § 82-1914.13.

8-5-315. Acts 1971, No. 108, § 15; A.S.A. 1947, § 82-1914.14.

8-5-316. Acts 1971, No. 108, § 16; A.S.A. 1947, § 82-1914.15.

8-5-317. Acts 1971, No. 108, § 17; A.S.A. 1947, § 82-1914.16.

8-5-318. Acts 1971, No. 108, § 18; A.S.A. 1947, § 82-1914.17.

8-5-319. Acts 1989, No. 701, § 1; 1993, No. 3, § 1; 1999, No. 1164, § 42.

SUBCHAPTER 4 — WATER POLLUTION CONTROL STATE GRANT ACT

SECTION.

8-5-401 — 8-5-404. [Repealed.]

Effective Dates. Acts 2003, No. 548, § 5: July 1, 2003. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that administration of the clean water fund is of critical importance to the citizens of Arkansas, that the fund may be administered more efficiently by an agency that specializes in the administration of numerous other revolving loan pro-

grams associated with environmental projects, and that the provisions of this act are necessary to preserve and improve the efficient administration of these programs. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 2003.”

8-5-401 — 8-5-404. [Repealed.]

Publisher’s Notes. This subchapter was repealed by Acts 2003, No. 548, § 4. The subchapter was derived from the following sources:

8-5-401. Acts 1972 (1st Ex. Sess.), No. 64, § 1; A.S.A. 1947, § 82-1915.

8-5-402. Acts 1972 (1st Ex. Sess.), No. 64, § 2; A.S.A. 1947, § 82-1915.1.

8-5-403. Acts 1972 (1st Ex. Sess.), No. 64, § 3; A.S.A. 1947, § 82-1915.2; Acts 1999, No. 1164, § 43.

8-5-404. Acts 1972 (1st Ex. Sess.), No. 64, § 3; A.S.A. 1947, § 82-1915.2; Acts 1999, No. 1164, § 44.

SUBCHAPTER 5 — UNDERGROUND SALT WATER DISPOSAL SYSTEMS

SECTION.

8-5-501. Regulation of systems generally.

8-5-502. Penalty for violation of § 8-5-501.

Effective Dates. Acts 2011, No. 791, § 11: Jan. 1, 2012.

Preambles. Acts 1969, No. 254 contained a preamble which read: “Whereas, some individuals, partnerships and corporations are operating oil wells and have been purporting to inject salt water back into the ground and claiming tax exemptions as allowed under Acts 57 and 138 of Acts of the General Assembly of the State of Arkansas, of 1959; and

“Whereas, while claiming tax exemptions some have been violating the provisions of said acts and have been discharging salt water and waste oil into streams

SECTION.

8-5-503. Denial of tax deductions.

8-5-504. Chlorides standard.

8-5-505. [Repealed.]

and at such places that the same have been seeping and going into branches and streams; and

“Whereas, the Pollution Control Commission seems to be unable under the present laws and rules to control pollution; and

“Whereas, its employees cannot properly enforce orders against pollution; and

“Whereas, the 5-year plan entered into in 1957 has failed to stop pollution; and

“Whereas, more definite rules are needed;

“Now, therefore....”

8-5-501. Regulation of systems generally.

(a)(1) The Arkansas Pollution Control and Ecology Commission and the Oil and Gas Commission are empowered to establish reasonable rules, regulations, and specifications for the establishment and operation of underground salt water disposal systems to be used in disposing of salt water produced in the production of oil.

(2)(A) Any person wishing to establish an approved underground salt water disposal system shall make application to the Arkansas Pollution Control and Ecology Commission and the Oil and Gas Commission for a permit to construct and operate the underground salt water disposal system for the purpose of obtaining the benefits of the provisions of this section, §§ 8-5-502, 26-58-201 — 26-58-204, 26-58-206, 26-58-207 [repealed], 26-58-208 — 26-58-210, and 26-58-211 [repealed].

(B) The application shall include:

(i) A description of the underground salt water disposal system that is to be established;

(ii) The plans and specifications thereof;

(iii) The location of the underground salt water disposal system and the number and location of the salt water producing oil wells to be served by the underground salt water disposal system;

(iv) The name of each oil producer to be served;

(v) A description of the underground level or strata into which the salt water is to be injected; and

(vi) Such other information as may be required by rules and regulations of the Arkansas Pollution Control and Ecology Commission and the Oil and Gas Commission.

(b)(1) If the Arkansas Pollution Control and Ecology Commission and the Oil and Gas Commission determine that the underground salt water disposal system for which application is made will meet the requirements of this section, §§ 8-5-502, 26-58-201 — 26-58-204, 26-58-206, 26-58-207 [repealed], 26-58-208 — 26-58-210, and 26-58-211 [repealed], and the rules and regulations of the Arkansas Pollution Control and Ecology Commission and the Oil and Gas Commission, a permit for the establishment of the underground salt water disposal system shall be issued.

(2)(A) Upon the completion of the underground salt water disposal system, the commission granting the permit provided for in this section shall cause an inspection of the underground salt water disposal system to be made.

(B)(i) If the commission determines that the underground salt water disposal system is in compliance with the requirements of this section, §§ 8-5-502, 26-58-201 — 26-58-204, 26-58-206, 26-58-207 [repealed], 26-58-208 — 26-58-210, and 26-58-211 [repealed], and the rules and regulations of the commission, a certificate of approval of the underground salt water disposal system shall be granted.

(ii) The certificate of approval shall be signed by the chair and secretary of the commission.

(iii) Copies of the certificate of approval shall be furnished, upon application therefor, to each oil producer who disposes of salt water through such approved underground salt water disposal system.

(3)(A) The commission granting the certificate of approval shall, from time to time, inspect the approved underground salt water disposal system.

(B)(i) If a determination is made that the underground salt water disposal system is being operated in a manner contrary to the provisions of this section, §§ 8-5-502, 26-58-201 — 26-58-204, 26-58-206, 26-58-207 [repealed], 26-58-208 — 26-58-210, and 26-58-211 [repealed], or the rules and regulations of the commission, the commission may revoke the certificate of approval until such time as a showing may be made that the deficiencies in the underground salt water disposal system have been corrected to the satisfaction of the commission.

(ii) No oil producer shall be entitled to the benefits of the provisions of this section, §§ 8-5-502, 26-58-201 — 26-58-204, 26-58-206, 26-58-207 [repealed], 26-58-208 — 26-58-210, and 26-58-211 [repealed], during the period in which the certificate of approval is revoked.

History. Acts 1959, No. 57, § 4; A.S.A. 1947, § 84-2116.

8-5-502. Penalty for violation of § 8-5-501.

Any person violating the provisions of § 8-5-501 shall be guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or be imprisoned not less than thirty (30) days nor more than one (1) year, or be both so fined and imprisoned.

History. Acts 1959, No. 57, § 8; A.S.A. 1947, § 84-2120.

Publisher's Notes. Acts 1959, No. 57, § 8, is also codified as § 26-58-203.

8-5-503. Denial of tax deductions.

(a) Should any individual, partnership, corporation, or employee knowingly or negligently cause, let, or permit salt water to flow, seep, or otherwise escape from the leased premises, the rights of the party to claim tax deductions or credits under §§ 8-5-501, 8-5-502, 26-58-201 — 26-58-206, 26-58-207 [repealed], and 26-58-208 — 26-58-210, will be denied for a period of twelve (12) months.

(b)(1) Any individual can file a complaint before the Arkansas Pollution Control and Ecology Commission against anyone for violations of this section and secure a hearing.

(2)(A) If the commission should find that the accused has violated this section, then the violator shall be denied any tax exemption for a period of one (1) year.

(B) Any violation of this section during the period of the suspension shall extend the suspension one (1) year from the date of the last violation.

History. Acts 1969, No. 254, §§ 1-3; A.S.A. 1947, §§ 84-2120.1 — 84-2120.3; Acts 2011, No. 791, § 1.

8-5-504. Chlorides standard.

Should the water of any stream of this state have more than two hundred fifty parts per million (250 ppm) of chlorides as a result of a violation of this subchapter, then the Arkansas Pollution Control and Ecology Commission shall seek to learn of the source of the pollution and take steps to eliminate the source of pollution.

History. Acts 1969, No. 254, § 4; A.S.A. 1947, § 84-2120.4; Acts 2003, No. 1180, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Environmental Law, 26 U. Ark. Little Rock L. Rev. 405.

8-5-505. [Repealed.]

A.C.R.C. Notes. This section, concerning fees, was derived from Acts 1959, No. 57, § 7. Acts 1959, No. 57, § 7 was also codified as § 26-58-211 [repealed]. Section 26-58-211 was repealed by Acts 1993, No. 344, § 2. The title of Acts 1993, No. 344 was “an act to repeal certain taxes and

fees levied by Arkansas Code Annotated which generate minimal revenue and are an administrative burden on the state; and for other purposes.” Accordingly, it appears that this section was impliedly repealed by Acts 1993, No. 344, § 2.

SUBCHAPTER 6 — ARKANSAS PRIVATIZATION ACT

SECTION.
8-5-601. Title.
8-5-602. Legislative policy.
8-5-603. Definitions.
8-5-604. Construction.
8-5-605. Applicability.
8-5-606. Privatization contracts generally.
8-5-607. Service agreements generally.
8-5-608. Privatization contracts and service agreements — Assignment.
8-5-609. Privatization contracts, service

SECTION.
agreements, etc. — Exemption from certain laws.
8-5-610. Privatization contracts, service agreements, etc. — Exemption from Arkansas Public Service Commission’s jurisdiction.
8-5-611. Tax exemption.
8-5-612. Wastewater projects and solid waste disposal projects are industrial facilities for other acts.

Effective Dates. Acts 1985, No. 690, § 12: Mar. 28, 1985. Emergency clause provided: “It is hereby found and declared by the General Assembly that historically

a significant portion of the funding of the cost of construction of wastewater projects has been provided through grants from the United States of America and in recent years funds available to local governments for such grants have been substantially reduced thereby placing an increasingly intolerable burden on local governments to provide the cost of constructing and improving such sewer ser-

vice and facilities and there is an immediate and pressing need to provide such service, and that alternate means of financing and acquisition are needed. Therefore, an emergency is hereby declared to exist and this act, being immediately necessary for the protection of the public peace, health and safety, shall take effect, and be in full force, immediately on its passage and approval."

CASE NOTES

Cited: *Get Rid of It, Inc. v. City of Smackover*, 59 Ark. App. 93, 952 S.W.2d 192 (1997).

8-5-601. Title.

This subchapter shall be known and cited as the "Arkansas Privatization Act".

History. Acts 1985, No. 690, § 1; A.S.A. 1947, § 82-1992.

8-5-602. Legislative policy.

The General Assembly declares that the policy of this state is to assure its citizens adequate public services, particularly wastewater projects, and solid waste disposal projects, at reasonable cost, and that such services are essential to the maintenance and general welfare of the citizens of this state and to the continued expansion of the state's economy, job market, and industrial base. However, the cost of constructing, owning, and operating capital facilities to meet the demand for those public services is becoming increasingly burdensome to cities, counties, and improvement districts, and it is desirable that innovative financing mechanisms be made available to assist the communities of this state in developing wastewater projects and solid waste disposal projects at reasonable cost. Private sector ownership and operation of capital facilities providing public services can result in cost savings to communities contracting for those public services. It is, therefore, in the best public interest of the state and its citizens that cities, counties, and improvement districts be authorized to cause such services to be provided by private enterprise and to contract with private owners or operators for providing the services to the public.

History. Acts 1985, No. 690, § 2; A.S.A. 1947, § 82-1992.1; Acts 1991, No. 629, § 1.

8-5-603. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Chief executive" means the mayor of a municipality, the county judge of a county, or the chair of an improvement district, commission, agency, or similar body;

(2) "Clerk" means the city clerk or town recorder of a municipality, the county clerk of a county, or the secretary of the board of commissioners of an improvement district, commission, agency, or similar body;

(3) "Cost" means the cost of acquiring, constructing, and financing any privatization project and placing the privatization project in service, including without limitation:

(A) The cost of acquisition and construction of any facility or any modification, improvement, or extension of that facility;

(B) Any cost incident to the acquisition of any necessary property, easement, or right-of-way;

(C) Engineering or architectural fees, legal fees, and fiscal agents' and financial advisors' fees;

(D) Any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed privatization project; and

(E) Costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications, and the inspection and supervision of the construction of any facility and any other cost incurred by the local government;

(4) "Facility" means any structure, building, machinery, system, land, right, permit, or other property necessary or desirable for the ownership and operation of a wastewater project or solid waste disposal project, including without limitation, all related and appurtenant easements and rights-of-way, improvements, utilities, equipment, and furnishings;

(5) "Local government" means a city or incorporated town in the State of Arkansas, any county in the State of Arkansas, an improvement district organized under the law of the State of Arkansas, or any other political subdivision, agency, or instrumentality of the State of Arkansas or any of the foregoing;

(6) "Ordinance" means an ordinance, resolution, or other appropriate legislative enactment of the governing body of a local government;

(7) "Private owner or operator" means a person, firm, corporation, or partnership that is not a public entity and which owns or operates a privatization project;

(8)(A) "Privatization" means any wastewater project or solid waste disposal project, including wastewater projects and solid waste disposal projects acquired from a local government, which is owned or operated by a private owner or operator and provides the related service to the public.

(B) "Privatization" includes, but is not limited to:

(i) The acquisition, construction, reconstruction, repair, alteration, modernization, renovation, improvement, or extension of any such wastewater project or solid waste disposal project, whether or not in existence or under construction, and financing the cost of those activities;

(ii) The purchase, installation, or financing of equipment, machinery, and other personal property required by such wastewater project or solid waste disposal project; and

(iii) The acquisition, improvement, or financing of real property and the extension or provision of utilities, access roads, and other appurtenant facilities, all of which are to be used or occupied by any person in providing wastewater projects or solid waste disposal projects;

(9) "Solid waste" means all putrescible and nonputrescible wastes in solid or semisolid form, including, but not limited to, yard or food waste, waste glass, waste metals, waste plastics, wastepaper, waste paperboard, and all other solid and semisolid wastes resulting from industrial, commercial, agricultural, community, and residential activities;

(10) "Solid waste disposal project" means any facility designed and operated for the disposition by landfilling, incinerating, composting, or other method of disposing of solid waste; and

(11) "Wastewater project" means sewage collection systems and treatment plants, including without limitation, intercepting sewers, outfall sewers, force mains, pumping stations, instrumentation and control systems, and other appurtenances necessary or useful for the collection, removal, reduction, treatment, purification, disposal, and handling of liquid and solid waste, sewage and industrial waste, and refuse.

History. Acts 1985, No. 690, § 3; A.S.A. 1947, § 82-1992.2; Acts 1991, No. 629, §§ 2-4.

8-5-604. Construction.

(a) This subchapter shall be construed liberally to effect its purposes and neither this subchapter nor anything contained in this subchapter is or shall be construed as a restriction or limitation upon any powers which any local government or private owner or operator might otherwise have under any laws of this state, and the provisions of this subchapter are cumulative to any such powers.

(b) This subchapter does and shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to other laws.

History. Acts 1985, No. 690, § 9; A.S.A. 1947, § 82-1992.8.

8-5-605. Applicability.

This subchapter does not apply to the disposition of surplus property by a local government, nor to any other action of a local government which is not connected with a privatization contract.

History. Acts 1985, No. 690, § 6; A.S.A. 1947, § 82-1992.5.

8-5-606. Privatization contracts generally.

(a) Any local government may enter into a privatization contract with a private owner or operator to accomplish the transfer of any local government-owned wastewater project or solid waste disposal project or the designing, construction, operation, maintenance, or financing of cost, or any combination thereof, of a wastewater project or solid waste disposal project, pursuant to the provisions of this subchapter.

(b)(1) A local government considering entering into a privatization contract pertaining to its municipally owned wastewater project or solid waste disposal project, or any portion thereof, shall publish notice of its intention to adopt an ordinance to accomplish the privatization.

(2) The notice shall:

(A) Set forth a brief summary of the privatization contract provisions; and

(B) Set a time and place for a public hearing to be conducted by the chief executive.

(3) The notice shall be published in a newspaper having general circulation within the county in which a substantial portion of the wastewater project or solid waste disposal project is located by one (1) publication each week for a period of two (2) weeks. The first publication shall be not less than fourteen (14) days prior to the adoption of the ordinance approving the execution of the privatization contract.

(c) The hearing may be held in conjunction with any hearing on the question of issuing bonds to finance the cost of the privatization project, on the question of adoption of the service agreement, or any other question.

(d) A copy of the proposed privatization contract shall be filed as a public record with the clerk of the local government not less than two (2) weeks prior to the adoption of the ordinance.

History. Acts 1985, No. 690, § 4; A.S.A. 1947, § 82-1992.3; Acts 1991, No. 629, § 5.

8-5-607. Service agreements generally.

(a)(1) In connection with a privatization contract, a local government, if authorized by ordinance of its governing body, may enter into one (1) or more service agreements with a private owner or operator pursuant to which the private owner or operator will provide one (1) or

more sewer services or solid waste disposal services to or for the benefit of the local government.

(2) The service agreement may provide for the purchase by the local government of all or any part of the capacity, capability, or output of the facilities used to provide the applicable sewer service or solid waste disposal service and shall contain such other terms and conditions as the local government and the private owner or operator may provide, including without limitation, the charges or rates for the services and a covenant by the local government to maintain rates sufficient to pay debt service incurred in connection with the financing of construction of a wastewater project or solid waste disposal project.

(b)(1) Prior to the execution of a service agreement, the local government shall publish notice of its intention to adopt an ordinance to accomplish the service agreement.

(2) The notice shall:

(A) Set forth a brief summary of the service agreement provisions; and

(B) Set a time and place for a public hearing to be conducted by the chief executive.

(3) The notice shall be published in a newspaper having general circulation within the county in which a substantial portion of the wastewater project or solid waste disposal project is located by one (1) publication each week for a period of two (2) weeks. The first publication shall be not less than fourteen (14) days prior to the adoption of the ordinance approving the execution of the service agreement.

(c) The hearing may be held in conjunction with any hearing on the question of issuing bonds to finance the cost of the privatization project, on the question of adoption of the service agreement, or any other question.

(d) A copy of the proposed service agreement shall be filed as a public record with the clerk of the local government not less than two (2) weeks prior to the adoption of the ordinance.

History. Acts 1985, No. 690, § 5; A.S.A. 1947, § 82-1992.4; Acts 1991, No. 629, § 6.

8-5-608. Privatization contracts and service agreements — Assignment.

The privatization contract or the service agreement may be assigned by either party to secure the performance of any obligation in connection with the financing of the construction or operation of a wastewater project or solid waste disposal project.

History. Acts 1985, No. 690, § 4; A.S.A. 1947, § 82-1992.3; Acts 1991, No. 629, § 7.

8-5-609. Privatization contracts, service agreements, etc. — Exemption from certain laws.

The privatization contract, the service agreement, and any other purchase by the local government in connection with the privatization contract shall not be subject to the provisions of §§ 14-22-101 — 14-22-115, 14-58-201 — 14-58-203, 14-58-301 — 14-58-303, 14-58-305, 14-58-306 [repealed], 14-58-307, and 14-58-308 or any other law or regulation requiring competitive bids.

History. Acts 1985, No. 690, § 4; A.S.A. 1947, § 82-1992.3.

8-5-610. Privatization contracts, service agreements, etc. — Exemption from Arkansas Public Service Commission's jurisdiction.

The service agreement, the privatization contract, the charges and rates for sewer or other service, and private owners or operators shall not be subject to Acts 1935, No. 324, as amended, and § 23-4-201, and shall be exempt from the jurisdiction of the Arkansas Public Service Commission and any other successor regulatory agency.

History. Acts 1985, No. 690, § 5; A.S.A. 1947, § 82-1992.4.

Publisher's Notes. Acts 1935, No. 324 referred to in this section is codified as §§ 14-200-101, 14-200-103 — 14-200-108, 14-200-111, 23-1-101 — 23-1-112, 23-2-301, 23-2-303 — 23-2-308, 23-2-310, 23-2-312, 23-2-314 — 23-2-316, 23-2-402, 23-2-

404 [repealed], 23-2-405, 23-2-408, 23-2-410 — 23-2-412, 23-2-414 — 23-2-421, 23-2-426, 23-2-428, 23-2-429, 23-3-101 — 23-3-107, 23-3-112 — 23-3-115, 23-3-118, 23-3-119, 23-3-201 — 23-3-206, 23-4-102, 23-4-103, 23-4-105 — 23-4-109, 23-4-205, 23-4-402 — 23-4-405, 23-4-407 — 23-4-418, 23-4-620 — 23-4-634, 23-18-101.

8-5-611. Tax exemption.

No income, sales, use, ad valorem, or other tax, assessment, or license shall be levied upon or collected with respect to any property which is held by or purchased by a private owner or operator for the public purpose of performing a privatization contract or a service agreement, since the property benefits the public.

History. Acts 1985, No. 690, § 7; A.S.A. 1947, § 82-1992.6.

8-5-612. Wastewater projects and solid waste disposal projects are industrial facilities for other acts.

For purposes of any other law, including without limitation, the Municipalities and Counties Industrial Development Revenue Bond Law, § 14-164-201 et seq., "facilities" or a similar term includes a wastewater project or solid waste disposal project as those terms are defined in this subchapter, so that any law adopted authorizing the issuance of industrial development bonds, industrial development

revenue bonds, or similar evidences of indebtedness shall be available for utilization in connection with a privatization project.

History. Acts 1985, No. 690, § 8; A.S.A. 1947, § 82-1992.7; Acts 1991, No. 629, § 8.

SUBCHAPTER 7 — CHRONIC NONCOMPLIANCE

SECTION.

8-5-701. Definitions.

8-5-702. Remedies for chronic violations.

8-5-703. Financial assurance require-

ments for subsequently permitted common sewage systems.

8-5-701. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Chronic noncompliance” means conditions described in this subchapter that persist at a common sewage system after reasonable efforts by the Arkansas Department of Environmental Quality to obtain compliance with applicable laws or regulations in one (1) of the following:

(A) Failure to obtain a permit as required by law;

(B) Four (4) or more permit violations within a six-month period as set out in the permit issued by the department;

(C) Failure to maintain the services of a certified wastewater treatment operator, where applicable; or

(D) Demonstrable failure to operate the common sewage system so as to prevent the discharge of waterborne pollutants in unacceptable concentrations, as defined in the individual permit or the state’s water quality standards, to the surface waters or groundwater of the state; and

(2)(A) “Common sewage system” means any sewage treatment system and its associated sewage collection and pumping facilities, nonmunicipal, publicly or privately owned, serving two (2) or more individually owned, rented, or temporarily occupied lots for the purpose of the collection or disposal of sewage.

(B) “Common sewage system” includes systems owned or operated by:

(i) Property owners’ associations;

(ii) Nonmunicipal sewage improvement districts; and

(iii) Owners or managers of nonmunicipal residential subdivisions.

History. Acts 1995, No. 336, § 1; 1999, No. 1164, § 45.

8-5-702. Remedies for chronic violations.

(a) The Arkansas Department of Environmental Quality may petition a circuit court with competent jurisdiction and proper venue to remedy chronic violations by any common sewage system.

(b) The circuit court may order any relief authorized by applicable laws, including:

- (1) The imposition of civil penalties;
- (2) The revocation of the entity's permit; and
- (3) A court order compelling the entity supplying potable water to the common sewage system to cut off the flow of potable water.

(c)(1) If the circuit court finds that circumstances prevent the owner or operator of a common sewage system from operating and maintaining the system in compliance with the law, the Arkansas Department of Environmental Quality shall nominate two (2) possible receivers, of which the court may appoint one (1) to operate the common sewage system, subject to the continuing jurisdiction of the circuit court.

(2) Any such receiver appointed by the circuit court may exercise any and all legal powers and rights assigned by law to the original owner or operator of the common sewage system, but is immune to any personal liability associated with the operation of the common sewage system.

(3) Once a receiver is appointed by the circuit court to operate the common sewage system, the circuit court may make available to the receiver funds pledged by the common sewage system under the minimal financial assurance provision of this subchapter, and, in addition, the receiver may assess rates as necessary to operate and maintain the common sewage system. The receiver is explicitly authorized to operate the common sewage system with the proceeds collected from the facilities which are connected to such common sewage system. The receiver shall receive a reasonable professional fee for this service, which shall be determined by the circuit court. The proceeds collected by the receiver shall be maintained in an account at a national bank located within the State of Arkansas. The receiver shall report to the circuit court, from time to time, how the proceeds have been collected and spent by the receiver.

(d)(1) If the circuit court determines that the permitted or registered entity cannot equitably satisfy the provisions of this subchapter or that no feasible alternatives exist, the circuit court shall so certify that determination to the Arkansas Department of Environmental Quality, which shall terminate the entity's permit, and the circuit court shall request a review by the Director of the Department of Health of the public health impact of an order compelling the entity supplying potable water to the common sewage system to cut off the flow of potable water.

(2)(A) If the Director of the Department of Health determines that a greater health hazard exists from the malfunctioning common sewage system than from the discontinuance of potable water service, then the Director of the Department of Health shall so certify this determination to the circuit court.

(B) The circuit court shall then issue an order compelling the receiver to notify all users of such common sewage system, including landowners and tenants, of the Director of the Department of Health's determination.

(C) Upon evidence of reasonable notice, the circuit court shall then issue the order to cut off the flow of potable water.

(e) The Arkansas Department of Environmental Quality is authorized to institute a civil action in any court of competent jurisdiction to accomplish any or all of the following:

(1) Restrain any violation of or compel compliance with the provisions of this subchapter and of rules, regulations, orders, permits, or plans issued pursuant thereto;

(2) Affirmatively order remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter;

(3) Recover all costs, expenses, and damages to the Arkansas Department of Environmental Quality and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including, but not limited to, natural resource damages;

(4) Assess civil penalties in an amount not to exceed ten thousand dollars (\$10,000) per day for violations of this subchapter and of any rules, regulations, permits, or plans issued pursuant thereto; or

(5) Recover civil penalties assessed pursuant to § 8-4-103(c).

(f)(1) In addition to the remedies provided in subsections (a)-(e) of this section, the Arkansas Department of Environmental Quality shall have the authority to prohibit new or additional sewer line connections onto a common sewage system meeting the criteria established by § 8-5-701.

(2) Once the Arkansas Department of Environmental Quality is satisfied that the common sewage system is in compliance with state and federal law, the Arkansas Department of Environmental Quality may authorize new or additional sewer line connections onto the common sewage system.

History. Acts 1995, No. 336, § 1; 1997, No. 287, § 1; 1999, No. 1164, §§ 46-49.

8-5-703. Financial assurance requirements for subsequently permitted common sewage systems.

(a)(1)(A) The Arkansas Department of Environmental Quality may require a permitted common sewage system that is in chronic noncompliance to demonstrate to the department its financial ability to cover the estimated costs of operating and maintaining the common sewage system for a minimum period of five (5) years.

(B) The department may require the permitted common sewage system that is in chronic noncompliance to submit a cost estimate for a third party to operate and maintain the common sewage system each year for a period of five (5) years.

(2) The department shall not modify or renew a National Pollutant Discharge Elimination System permit or state permit for a common sewage system if the common sewage system facility is in chronic noncompliance and the common sewage system facility proposes to use

new technology that in the discretion of the department cannot be verified to meet permit requirements.

(b) The applicant’s financial ability to operate and maintain the common sewage system for a period of five (5) years shall be demonstrated to the department by:

(1) Obtaining insurance that specifically covers operation and maintenance costs;

(2) Obtaining a letter of credit;

(3) Obtaining a surety bond;

(4) Obtaining a trust fund or an escrow account; or

(5) Using a combination of insurance, letter of credit, surety bond, trust fund, or escrow account.

(c) The department may require an amount of financial assurance that exceeds the cost estimate submitted by the applicant.

(d) A financial instrument required by this section shall be posted to the benefit of the department and shall remain in effect for the life of the permit.

(e) It is explicitly understood that the department shall not directly operate and shall not be responsible for the operation of any sewage system.

(f) This section does not restrict local and county government entities from enacting more stringent ordinances regulating nonmunicipal domestic treatment sewage systems in Arkansas.

History. Acts 1995, No. 336, § 1; 1999, No. 1164, §§ 50, 51; 2007, No. 832, § 2; 2009, No. 409, § 2.

1995, No. 336, § 1, subdivision (a)(1) and subsection (b) began: “After the effective date of this Act.” Acts 1995, No. 336, became effective July 28, 1995.

A.C.R.C. Notes. As enacted by Acts

SUBCHAPTER 8 — SMALL BUSINESS REVOLVING LOAN FUND

SECTION.

8-5-801. Title.

8-5-802. Purpose.

8-5-803. Definitions.

8-5-804. Eligible activities.

8-5-805. Eligible applicants.

SECTION.

8-5-806. Terms of the revolving loan.

8-5-807. Small Business Revolving Loan Fund.

8-5-808. Administration of the program.

Effective Dates. Acts 1997, No. 691, § 6: July 1, 1997. Emergency clause provided: “It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the

event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997.”

8-5-801. Title.

This subchapter may be called the “Small Business Revolving Loan Fund for Pollution Control and Prevention Technologies Act”.

History. Acts 1997, No. 691, § 1.

8-5-802. Purpose.

It is the purpose of this subchapter to authorize the Arkansas Department of Environmental Quality to establish and administer a revolving loan fund to encourage the investment in pollution control and prevention technologies in Arkansas. The fund will promote sustainable economic development in Arkansas by establishing a publicly capitalized fund to make loans to small businesses for projects to meet regulatory mandates in pollution control, to adopt pollution prevention technologies, or to implement waste reduction practices.

History. Acts 1997, No. 691, § 1; 1999, No. 1164, § 52; 2001, No. 213, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Environmental Law, 24 U. Ark. Legislation, 2001 Arkansas General As- Little Rock L. Rev. 475.

8-5-803. Definitions.

As used in this subchapter:

(1) “Applicant” means any business concern operating within the State of Arkansas that meets the criteria of a person, corporation, partnership, or other business organization;

(2) “Commission” means the Arkansas Pollution Control and Ecology Commission;

(3) “Department” means the Arkansas Department of Environmental Quality;

(4) “Director” means the executive head and active administrator of the Arkansas Department of Environmental Quality;

(5) “Mandated environmental control” means any change in a commercial process that is required by federal or state environmental law or duly adopted regulation;

(6)(A) “Pollution prevention” means reducing or eliminating the generation of pollutants and waste at the source.

(B) “Pollution prevention” shall be expanded to also include process modifications and equipment acquisitions that promote the recovery and reuse of pollutants.

(C) Specifically excluded from this definition of eligible activities are investments in waste treatment processes or equipment, unless the treatment involves the recovery and reuse of pollutants.

(D) “Pollution prevention” also may include the acquisition and installation of capital equipment, a process change, or a combination of capital equipment and process change; and

(7)(A) “Waste reduction” means handling or processing waste materials in a way that ultimately reduces the total quantity of waste disposed.

(B) “Waste reduction” includes process modifications and equipment acquisitions that promote the recovery, reuse, or recycling of pollutants and wastes.

History. Acts 1997, No. 691, § 1; 1999, No. 1164, §§ 53, 54; 2001, No. 213, § 2; 2005, No. 1254, § 1.

8-5-804. Eligible activities.

(a) Moneys deposited into the Small Business Revolving Loan Fund within the Arkansas Department of Environmental Quality may be:

(1) Loaned to eligible participants to pay the direct costs of projects which are designed to correct or avoid violations of federal or state environmental regulations and have received a certificate of need from the department; or

(2) Expended to pay costs incurred by the department to provide management of lending activities.

(b)(1) It is the purpose of this subchapter to authorize the department to establish and administer a revolving loan fund to encourage the investment in pollution control, pollution prevention, and waste reduction practices in Arkansas.

(2) Such a fund will promote sustainable economic development in Arkansas by establishing a publicly capitalized revolving loan fund to make loans to small businesses for projects to meet regulatory mandates in pollution control or to adopt pollution prevention technologies.

(3) Operating expenses associated with proofing a process change or equipment modification would be an eligible loan activity.

History. Acts 1997, No. 691, § 1; 1999, No. 1164, § 55; 2001, No. 213, § 3.

8-5-805. Eligible applicants.

(a) An eligible applicant shall:

(1) Employ one hundred (100) or fewer individuals, including both full-time and part-time employees, through direct hiring or contract, including affiliates and subsidiaries, at the time an application for a loan is received by the Arkansas Department of Environmental Quality;

(2) Provide proof of profitable operations and a demonstrated ability to repay the loan; and

(3) Submit an application supplied by the department including any supporting documents, instruments, or other documents requested by

the department for the purposes of recommending approval or disapproval of a loan described in this section.

(b)(1) Until all delinquent fees stated in this subsection or otherwise owed to the department are paid in full and no balance is due, the Director of the Arkansas Department of Environmental Quality shall not approve any loan application.

(2) The delinquent fees include, but are not limited to:

- (A) Permit fees;
- (B) Permit modification fees;
- (C) License fees;
- (D) Certification fees;
- (E) Registration fees;
- (F) Variance application fees;
- (G) Civil penalties;
- (H) Emergency response reimbursements;
- (I) Loan payments; and
- (J) Review fees.

History. Acts 1997, No. 691, § 1; 2005, No. 1254, § 2.

8-5-806. Terms of the revolving loan.

(a)(1) The maximum loan amount shall be:

(A) Forty-five thousand dollars (\$45,000) per mandated pollution control project;

(B) Forty-five thousand dollars (\$45,000) per pollution prevention project; and

(C) Forty-five thousand dollars (\$45,000) per waste reduction project.

(2) The maximum allowable amount to be loaned shall not exceed sixty-five thousand dollars (\$65,000) per individual applicant.

(b) The maximum term of the loan shall be ten (10) years per mandated pollution control project and ten (10) years per pollution prevention or waste reduction project.

(c) The interest rate shall be:

(1) Established by the Arkansas Department of Environmental Quality at or below market rate; and

(2) Fixed for the term of each loan at the rate that is in effect when the loan application is received or when the loan is closed, whichever is lower.

(d)(1) The borrower shall be required to make level monthly amortizing payments to retire the debt by the end of the loan term.

(2) Loan principal may be repaid in part or in full at any time without penalty.

(e)(1) The department may:

- (A) Make secured or unsecured loans with a promissory note;
- (B) Collect interest on any loans issued; and
- (C) Assess penalties on late loan payments.

(2) Loans issued under this subchapter may contain an acceleration clause.

(f) The department may bring any lawful action to recover any loan that is in default.

History. Acts 1997, No. 691, § 1; 1999, No. 1164, § 56; 2001, No. 213, § 4; 2005, No. 1254, § 3.

8-5-807. Small Business Revolving Loan Fund.

(a) There is created within the Arkansas Department of Environmental Quality a revolving loan fund:

(1) Which shall be designated the “Small Business Revolving Loan Fund”;

(2) Into which shall be transferred or deposited the moneys to be provided by law for the Small Business Revolving Loan Fund; and

(3) To be used as a revolving fund by the department for making loans to eligible participants to pay the direct costs of projects that are designed to correct or avoid violations of federal or state environmental regulations and have received a certificate of need from the department or to pay costs incurred by the department to provide management of lending activities.

(b)(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the “Small Business Revolving Loan Fund”.

(2) The Small Business Revolving Loan Fund shall consist of the following:

(A) All funds transferred from the General Improvement Fund to be otherwise provided by law for the Small Business Revolving Loan Fund;

(B) All moneys received by the department upon repayment of loans made from the furnishing of funds for loans under the program created by this subchapter;

(C) Interest earned upon any money in the Small Business Revolving Loan Fund; and

(D) All sums recovered upon by the Small Business Revolving Loan Fund for losses to the Small Business Revolving Loan Fund or for loan losses under the loan program created in this subchapter and all other moneys received for the Small Business Revolving Loan Fund from any source.

(c)(1) Subject to the provisions of this subchapter, the department is vested with full power, authority, and jurisdiction over the Small Business Revolving Loan Fund, including all moneys and property or securities belonging to the Small Business Revolving Loan Fund.

(2) The department may invest the Small Business Revolving Loan Fund in direct general obligations of the United States, in certificates of deposit or savings accounts in an amount not to exceed the capital funds, represented by capital, surplus, and undivided profits in finan-

cial institutions located in Arkansas that are insured by an agency of the United States Government, and in repurchase agreements that are collateralized by direct general obligations of the United States or by bonds, notes, debentures, participation certificates, or other obligations issued by an agency of the United States, the principal and interest of which are guaranteed by the agency or the United States.

History. Acts 1997, No. 691, § 1; 1999, No. 1164, §§ 57, 58; 2005, No. 1254, § 4.

Cross References. Small Business Revolving Loan Fund, § 19-5-1105.

8-5-808. Administration of the program.

The Arkansas Department of Environmental Quality will manage the program through its Small Business Assistance Program. The program is authorized to delegate the management of the Small Business Revolving Loan Fund. The department shall retain the power to issue certificates of need for eligible projects and shall not delegate such authority.

History. Acts 1997, No. 691, § 1; 1999, No. 1164, § 59.

SUBCHAPTER 9 — LONG-TERM ENVIRONMENTAL PROJECTS

SECTION.

8-5-901. Legislative findings and intent.

8-5-902. Definitions and applicability.

8-5-903. Procedures for approval of environmental projects, contents of applications, and public notice.

SECTION.

8-5-904. Modification of water quality standards.

8-5-905. Project completion.

8-5-901. Legislative findings and intent.

The General Assembly hereby finds that many areas of the state would benefit from long-term environmental remediation projects that significantly improve the effects caused by industrial or extractive activities. However, commitments by private enterprise to remedy such damages are discouraged by the prospect of civil liability based upon rigid application of state water quality standards to the enterprise's activities. The purpose of this subchapter is to preserve the state's approach to establishing water quality standards, while also encouraging private enterprises to make significant improvements to closed or abandoned sites that are of such magnitude that more than three (3) years would be required to complete the project.

History. Acts 1997, No. 401, § 1.

8-5-902. Definitions and applicability.

As used in this subchapter:

(1) “Commission” means the Arkansas Pollution Control and Ecology Commission;

(2) “Department” means the Arkansas Department of Environmental Quality;

(3) “Long-term improvement project” or “project” means any remediation or reclamation project at closed or abandoned:

(A) Mineral extraction sites;

(B) Solid waste management units as defined pursuant to the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.;

(C) Oil and gas extraction sites;

(D) Brownfield sites as defined in Acts 1995, No. 125, or as may be amended; and

(E) Hazardous substance sites listed on the National Priorities List, 42 U.S.C. § 9605, or state priority list, § 8-7-509(f), or as may be amended; and

(4) “Water quality standard” means standards developed through administrative rulemaking by the commission.

History. Acts 1997, No. 401, § 2; 1999, No. 1164, § 60; 2013, No. 1127, § 4.

Publisher’s Notes. Acts 1995, No. 125, referred to in this section, is codified as §§ 8-7-503, 8-7-520, and 8-7-523 [repealed].

Amendments. The 2013 amendment, in (3)(E), substituted “Priorities” for “Priority” and “§ 8-7-509(f)” for “§ 8-7-509(e)”.

8-5-903. Procedures for approval of environmental projects, contents of applications, and public notice.

(a) A petitioner seeking approval of a change in water quality standards to accommodate a long-term improvement project shall file with the Arkansas Department of Environmental Quality a notice of intent, which includes as a minimum:

(1) A description of the water body or stream segment affected by the project;

(2) The existing ambient water quality for the use of criteria at issue;

(3) The affected water quality standard;

(4) The modifications sought;

(5) The proposed remediation activities;

(6) A proposed remediation plan, which shall contain:

(A) A description of the existing conditions, including identification of the conditions limiting the attainment of the water quality standards;

(B) A description of the proposed water quality standard modification, both during and post-project;

(C) A description of the proposed remediation plan; and

(D) The anticipated collateral effects, if any, of the remediation plan; and

(7) A schedule for implementing the remediation plan that ensures that the post-project water quality standards are met as soon as reasonably practicable.

(b) The department shall cause notice of the proposed project and associated water quality standard changes described in subsection (a) of this section to be published for public notice and comment in the same manner as provided for permit applications in § 8-4-203(c), and shall notify the public that the details of the proposed project are available for public review.

(c)(1) After considering comments from the public, the department shall notify the petitioner as to whether the proposed project is approved or denied.

(2) The department may deny approval of a project if it reasonably concludes that:

(A) The plan is not complete;

(B) The plan is not technically sound;

(C) The schedule is unrealistic;

(D) The plan will not have an overall beneficial effect for the environment; or

(E) For other appropriate reasons.

(3) Any department determination on the approval or denial of a project is subject to the appeal procedures applicable to permitting decisions set out in § 8-4-205.

(d) Upon approval of the project for further development, the petitioner shall prepare documentation required for third-party rulemaking by § 8-4-202 and established in administrative procedures.

History. Acts 1997, No. 401, § 3; 2009, No. 409, § 3.

8-5-904. Modification of water quality standards.

(a) The Arkansas Pollution Control and Ecology Commission may approve a modification where the water quality standard is not being maintained due to conditions which may, in part or in whole, be corrected through the implementation of long-term measures. The commission shall establish such subcategory of use and modify such general and specific standards as it deems appropriate to reflect such modification while ensuring that the fishable/swimmable use is maintained. In all water quality standard changes associated with long-term improvement projects, the remedial action plan described in § 8-5-903(a) shall be incorporated by reference in the statement of basis and purpose of the rule and shall be considered an essential condition of the modified water quality standard.

(b)(1) Once the commission approves a water quality standard modification, the Arkansas Department of Environmental Quality shall ensure that conditions and limitations designed to achieve compliance

with the plan are established in applicable discharge permits, consent administrative orders, or such other enforcement measures deemed appropriate by the department.

(2) The department may allow modifications by the petitioner to the remediation plan and schedule as is deemed appropriate, provided that any such modifications to the original remedial action plan shall not render the project significantly less protective of the applicable use subcategory.

(3) Should the department find that the petitioner is not acting in good faith to complete the project in accordance with the approved plan, applicable and appropriate enforcement authority may be exercised subject to appeal to the commission.

(c) The department or the petitioner shall report annually to the commission on the progress of the project.

History. Acts 1997, No. 401, § 4.

8-5-905. Project completion.

At the end of the long-term improvement project, the post-project water quality standards shall be in full force and effect.

History. Acts 1997, No. 401, § 5.

CHAPTER 6

DISPOSAL OF SOLID WASTES AND OTHER REFUSE

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. ARKANSAS SOLID WASTE MANAGEMENT ACT.
3. COUNTY SOLID WASTE MANAGEMENT SYSTEM AID FUND.
4. LITTER CONTROL ACT.
5. ILLEGAL DUMP ERADICATION AND CORRECTIVE ACTION PROGRAM ACT.
6. SOLID WASTE MANAGEMENT AND RECYCLING FUND ACT.
7. REGIONAL SOLID WASTE MANAGEMENT DISTRICTS AND BOARDS.
8. BONDS BY REGIONAL SOLID WASTE MANAGEMENT DISTRICTS.
9. LICENSING OF OPERATORS OF SOLID WASTE MANAGEMENT FACILITIES.
10. LANDFILL POST-CLOSURE TRUST FUND.
11. LANDFILL SERVICE AREAS.
12. DISPOSAL OF INCINERATOR ASH AND PETROLEUM-CONTAMINATED SOILS.
13. COMMERCIAL MEDICAL WASTE INCINERATION FACILITIES.
14. RESIDENTIAL USE OF LANDFILLS.
15. SITING HIGH IMPACT SOLID WASTE MANAGEMENT FACILITIES.
16. FINANCIAL ASSURANCE.
17. OPEN BURNING OF RESIDENTIAL YARD WASTE.
18. ANIMAL WASTE.
19. STATEWIDE SOLID WASTE MANAGEMENT PLAN ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved.]

SUBCHAPTER 2 — ARKANSAS SOLID WASTE MANAGEMENT ACT

SECTION.

- 8-6-201. Title.
- 8-6-202. Purpose.
- 8-6-203. Definitions.
- 8-6-204. Criminal, civil, and administrative penalties.
- 8-6-205. Illegal actions — Rebuttable presumption — Acts or omissions by third party.
- 8-6-206. Private right of action.
- 8-6-207. Powers and duties of the department and commission generally.
- 8-6-208. Existing rules, regulations, etc.
- 8-6-209. Local standards.
- 8-6-210. Agreements authorized.
- 8-6-211. Municipal solid waste management systems.

SECTION.

- 8-6-212. County solid waste management systems.
- 8-6-213. [Repealed.]
- 8-6-214. Records and examinations.
- 8-6-215 — 8-6-217. [Superseded.]
- 8-6-218. [Repealed.]
- 8-6-219. Applicants for permits — Applicability.
- 8-6-220. Yard waste — Definitions.
- 8-6-221. Review of rules and regulations.
- 8-6-222. Standards for sites and facilities.
- 8-6-223. Household hazardous waste storage or processing centers — Permit required.

Publisher's Notes. Acts 1997, No. 1219, § 1, provided: "Legislative intent. With Act 1230 of 1991, the General Assembly sought to delineate the respective responsibilities of the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Pollution Control & Ecology. Confusion on these issues in the public's perception continues, however, primarily because of the similarity in the names of these entities. The purpose of this Act is to achieve the legislative intent of Act 1230 of 1991 and to definitively assign the executive, adjudicatory, and rulemaking roles for the State's regulatory functions concerning protection of the environment."

Cross References. Agricultural operations, § 8-6-509.

Permit fees for air, water, and solid waste pollution control activities, § 8-1-101 et seq.

Effective Dates. Acts 1971, No. 237, § 15: Mar. 9, 1971. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that it is essential to the health, welfare and safety of the people of the State of Arkansas, and to the conservation of natural resources and the minimizing of environmental damage that ad-

equate sites and facilities be made available promptly for the proper disposal and recycling of solid wastes; that existing practices and laws are inadequate; that this act and the implementation thereof are necessary to the accomplishment of the foregoing purposes and to the welfare of the State of Arkansas and her people. Therefore, an emergency is hereby declared to exist, and this act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1007, § 7: Apr. 8, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that city and county governments and solid waste authorities are not permitted to collect delinquent solid waste management system fees and service charges under the county property tax collection system which county subordinate service districts are currently authorized to use; that the use of the county property tax collection system will improve fee collection and increase revenues for county solid waste management; and that, at this time, there is an increasingly critical need to collect all necessary rev-

enues to support the operation of city and county solid waste management systems and solid waste authorities. Therefore, in order to promote the effective collection of delinquent solid waste fees or service charges at this critical time, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1057, § 9: Apr. 9, 1991. Emergency clause provided: "It is hereby found and determined by the 78th General Assembly that the sanctions imposed by current Arkansas law for environmental violations are among the least stringent in the nation. Thus, current law is inadequate to deter environmental violations, and in fact extends an implicit invitation to irresponsible industries. Protection of the environmental integrity of this state is essential to protect the public's health and economic well-being. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1280, § 9: Apr. 21, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that some areas of the state are facing critical shortages of solid waste disposal capacity due to the difficulties in citing landfill facilities at the local level. It is found that the authority granted to municipalities and counties to adopt more restrictive standards for the location, design, construction, and maintenance of solid waste disposal sites and facilities than those adopted by the federal, state and regional laws, rules, regulations and orders has exacerbated and attenuated this crises and could thwart or jeopardize the purposes of Arkansas Act 752 of 1991 and its efforts to protect the public health and the state's environmental quality by establishing regional solid waste management and planning. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: "It is hereby

found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Act 2005, No. 1824, § 20: July 1, 2005. Emergency clause provided: "The General Assembly of the State of Arkansas hereby finds and determines that the decision of the Arkansas Supreme Court in *Arkansas Department of Environmental Quality v. Brighton Corp.* 352 Ark. 396, 102 S.W.3d 458 (2003), has raised questions regarding the factual proof required to establish a claim for cost recovery under the Arkansas Remedial Action Trust Fund Act and regarding the retroactivity of the statute. The General Assembly further finds and determines that the doubts raised by the decision in the Brighton case have created substantial uncertainty regarding the enforcement authority of the Arkansas Department of Environmental Quality and the rights and responsibilities of private parties under the Arkansas Remedial Action Trust Fund Act, all of which require urgent resolution. Therefore, an emergency is declared to exist; and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005, and shall apply retroactively."

Acts 2011, No. 174, § 2: Mar. 4, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that counties face a significant risk of nonpayment when a tenant is registered as an occupant for purposes of payment of solid waste management fees and charges; that an increasing number of tenants are not paying county solid waste management fees and charges; and that this act is necessary because counties are losing an increasing amount of revenue as the result of non-

payment of fees and charges by transient tenants. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

ALR. Private landowner's disposal of solid waste on own property. 37 A.L.R.4th 635.

Am. Jur. 61C Am. Jur. 2d, Pollution Control, § 1036 et seq.

Ark. L. Notes. Looney, Handling Administrative Proceedings Before the Arkansas Pollution Control and Ecology De-

partment and Commission, 1988 Ark. L. Notes 23.

C.J.S. 39A C.J.S., Health & Env., § 160.

U. Ark. Little Rock L.J. Survey, Water and Environmental Law, 12 U. Ark. Little Rock L.J. 665.

CASE NOTES

ANALYSIS

Purpose.

Authority of Local Governments.

Causes of Action.

Statute of Limitations.

Purpose.

The Arkansas Solid Waste Management Act, § 8-6-201 et seq., does not expressly grant municipalities the power to grant exclusive solid waste disposal franchises; however, the legislative intent to displace competition can be inferred from the statutory scheme because it is a necessary and reasonable consequence of engaging in the authorized activity. Regulation of solid waste management is one of the traditional public health functions of local government, and the legislative scheme contemplates displacing competition with regulation in the area of solid waste management and disposal. *L & H Sanitation, Inc. v. Lake City Sanitation, Inc.*, 769 F.2d 517 (8th Cir. 1985).

Authority of Local Governments.

Neither the Arkansas Solid Waste Management Act nor the Resource Conserva-

tion and Recovery Act have preempted the authority of local governments to adopt additional landfill standards as provided for in this statute. *Johnson v. Sunray Servs., Inc.*, 306 Ark. 497, 816 S.W.2d 582 (1991).

Causes of Action.

The legislature intended that the State be able to bring claims for natural resource damages under this subchapter and under §§ 8-4-101 et seq. and 8-7-201 et seq. *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

Statute of Limitations.

The environmental protection provisions found in this subchapter and §§ 8-4-101 et seq. and 8-7-201 et seq., are regulatory and protective rather than penal, and therefore the statute of limitations for penal actions, § 16-56-108, does not apply. *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

8-6-201. Title.

This subchapter may be cited as the “Arkansas Solid Waste Management Act”.

History. Acts 1971, No. 237, § 1; A.S.A. 1947, § 82-2701.

RESEARCH REFERENCES

Ark. L. Rev. Case Note, Johnson v. Sunray Services, Inc.: Possible Solutions to the NIMBY Syndrome, 45 Ark. L. Rev. 657.

CASE NOTES

ANALYSIS

Adversely Affected.
Construction with Other Laws.
Statute of Limitations.

Adversely Affected.

Following an initial clean-up of certain soil contamination, although the state issued a letter indicating that no further action was necessary, a reasonable jury could find that the property owners were adversely affected, for purposes of the Arkansas Solid Waste Management Act, § 8-6-201 et seq., by their lessee’s violation of the Act where the property owners had to remove contamination to accommodate the needs of their new tenant. Patton v. TPI Petroleum, Inc., 356 F. Supp. 2d 921 (E.D. Ark. 2005).

Construction with Other Laws.

Pursuant to § 8-7-812, where the Arkansas Solid Waste Management Act, § 8-6-201 et seq., provides a remedy, that remedy does not conflict with the Regulated Substance Storage Tank Law, § 8-7-801 et seq., because such a remedy would be in addition to, not in conflict with, the regulations found in the storage tank law; the storage tank law does not provide the exclusive remedy for storage tanks leaks and does not supersede the Solid Waste

Management Act absent a conflict. Patton v. TPI Petroleum, Inc., 356 F. Supp. 2d 921 (E.D. Ark. 2005).

Statute of Limitations.

Court denied summary judgment to the oil company, which was one of the defendants in an action by the landowners for damages from defendants’ dumping, as the Arkansas Solid Waste Management Act (ASWMA), § 8-6-201 et seq., contained no limitations period; the court believed that it was doubtful that the Arkansas Legislature intended that a limitations period specifically limited to actions founded on contract or liability, as set forth in § 16-56-105(3), should operate to reach out and limit the reach of the ASWMA. Sewell v. Phillips Petro. Co., 197 F. Supp. 2d 1160 (W.D. Ark. 2002).

District court’s verdict was reversed on appeal where the applicable statute of limitations, § 16-56-105, began to run at the latest date the plaintiff lessor learned its land had suffered a remediable injury, though it did not yet know the extent of the injury. Highland Indus. Park, Inc. v. BEI Def. Sys. Co., 357 F.3d 794 (8th Cir. 2004).

Cited: Laidlaw Waste Sys. v. City of Ft. Smith, 742 F. Supp. 540 (W.D. Ark. 1990); Southeast Ark. Landfill, Inc. v. State, 313 Ark. 669, 858 S.W.2d 665 (1993).

8-6-202. Purpose.

It is the purpose of this subchapter and it is declared to be the policy of this state to regulate the collection and disposal of solid wastes in a manner that will:

- (1) Protect the public health and welfare;
- (2) Prevent water or air pollution;

- (3) Prevent the spread of disease and the creation of nuisances;
- (4) Conserve natural resources; and
- (5) Enhance the beauty and quality of the environment.

History. Acts 1971, No. 237, § 2; A.S.A. 1947, § 82-2702.

CASE NOTES

Cited: Ark. Comm'n on Pollution Control & Ecology v. Land Developers, Inc., 284 Ark. 179, 680 S.W.2d 909 (1984); Arkansas ex rel. Bryant v. Dow Chem. Co., 981 F. Supp. 1170 (E.D. Ark. 1997); Sewell v. Phillips Petro. Co., 197 F. Supp. 2d 1160 (W.D. Ark. 2002).

8-6-203. Definitions.

As used in this subchapter:

(1) "Disposal site" means any place at which solid waste is dumped, abandoned, or accepted or disposed of for final disposition by incineration, landfilling, composting, or any other method;

(2)(A) "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may in the judgment of the Arkansas Department of Environmental Quality:

(i) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) Pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, or disposed of, or otherwise improperly managed.

(B) "Hazardous waste" includes without limitation waste that:

(i) Is radioactive;

(ii) Is toxic;

(iii) Is corrosive;

(iv) Is flammable;

(v) Is an irritant or a strong sensitizer; or

(vi) Generates pressure through decomposition, heat, or other means;

(3) "Household" means a single or multiple residence, hotel or motel, bunkhouse, ranger station, crew quarters, campground, picnic ground, and day-use recreation area;

(4)(A) "Household hazardous waste" means any hazardous waste derived from a household that is no longer under the control of the household.

(B) "Household hazardous waste" includes without limitation:

(i) Household cleaners;

(ii) Gasoline;

(iii) Paint, paint strippers, and paint thinners;

(iv) Motor oil; and

(v) Herbicides and pesticides, excluding antimicrobial and disinfectant products;

(5)(A) "Household hazardous waste storage or processing center" means a facility that stores, accumulates, or processes household hazardous waste.

(B) "Household hazardous waste storage or processing center" does not include:

(i) Hazardous waste treatment, storage, and disposal facilities permitted by the department under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.;

(ii) Agricultural operations as defined in § 8-6-509; or

(iii) De minimis amounts of household hazardous waste that have not been removed from the municipal solid waste stream;

(6) "Municipality" means a city of the first class, a city of the second class, or an incorporated town;

(7) "Person" means any individual, corporation, company, firm, partnership, association, trust, state agency, government instrumentality or agency, institution, county, city, town, municipal authority or trust, venture, or other legal entity, however organized;

(8)(A) "Pesticide" means a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or for use as a plant regulator, defoliant, or desiccant.

(B) "Pesticide" does not include:

(i) A new animal drug as defined in 21 U.S.C. § 321(v);

(ii) An animal drug that has been determined by regulation of the Secretary of the United States Department of Health and Human Services not to be a new animal drug; or

(iii) An animal feed as defined in 21 U.S.C. § 321(w);

(9) "Solid waste" means any garbage or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. § 1342, or source, special nuclear, or by-products material as defined by the Atomic Energy Act of 1954, 42 U.S.C. § 2011 et seq.;

(10) "Solid waste board" or "board" means a regional solid waste management board or a solid waste service area board, or its successor, created under § 8-6-701 et seq.;

(11) "Solid waste management system" means the entire process of source reduction, storage, collection, transportation, processing, waste minimization, recycling, and disposal of solid wastes by any person engaging in the process as a business or by any municipality, authority, trust, county, or by any combination of a municipality, authority, trust, or county; and

(12) “Transfer station” means a facility that is used to manage the removal, compaction, and transfer of solid waste from collection vehicles and other small vehicles to greater capacity transport vehicles.

History. Acts 1971, No. 237, § 3; A.S.A. 1947, § 82-2703; Acts 1991, No. 751, §§ 1, 2; 1995, No. 547, § 1; 1999, No. 1164, § 61; 2011, No. 1153, § 1; 2013, No. 1127, §§ 5, 6.

Amendments. The 2013 amendment substituted “Is radioactive” for “Radioactive” in (2)(B)(i); substituted “Is toxic” for “Toxic” in (2)(B)(ii); substituted “Is corrosive” for “Corrosive” in (2)(B)(iii); substi-

tuted “Is flammable” for “Flammable” in (2)(B)(iv); in (2)(B)(v), substituted “Is an” for “An” and “or” for “and” at the end; substituted “Generates” for “That generate” in (2)(B)(vi); substituted “as defined in” for “under the Federal Food, Drug, and Cosmetic Act” in (8)(B)(i) and (8)(B)(iii); substituted “§ 321(v)” for “301 § 201(w)” in (8)(B)(i); and substituted “§ 321(w)” for “301 § 201(x)” in (8)(B)(iii).

RESEARCH REFERENCES

Ark. L. Rev. Case Note, Johnson v. Sunray Services, Inc.: Possible Solutions to the NIMBY Syndrome, 45 Ark. L. Rev. 657.

CASE NOTES

Authority of Commission.

The legislature intended both the Solid Waste Act and Hazardous Waste Act to allow the Arkansas Department of Pollution Control and Ecology (PC & E), within certain guidelines, to determine what sub-

stances are permitted under those acts, and a decision by the PC & E permitting a category of waste not defined in any of the acts was not an abuse of discretion. Bryant v. Mathis, 310 Ark. 737, 839 S.W.2d 528 (1992).

8-6-204. Criminal, civil, and administrative penalties.

(a) CRIMINAL PENALTIES.

(1)(A) Any person who violates any provision of this subchapter, who commits any unlawful act under this subchapter, or who violates any rule, regulation, or order of the Arkansas Pollution Control and Ecology Commission or the Arkansas Department of Environmental Quality shall be guilty of a misdemeanor.

(B) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than one (1) year or a fine of not more than twenty-five thousand dollars (\$25,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(2)(A) It shall be illegal for a person to:

(i) Violate any provision of this subchapter, commit any unlawful act under this subchapter, or violate any rule, regulation, or order of the commission or department, and leave the state or remove his or her person from the jurisdiction of this state;

(ii) Through the course of activities prohibited by this section, purposely, knowingly, or recklessly cause pollution of the waters or air of the state in a manner not otherwise permitted by law and thereby create a substantial likelihood of adversely affecting human health, animal or plant life, or property; or

(iii) Purposely or knowingly make any false statement, representation, or certification in any document required to be maintained under this chapter, or falsify, tamper with, or render inaccurate any monitoring device, testing method, or record required to be maintained under this chapter.

(B)(i) A person who violates this subdivision (a)(2) shall be guilty of a felony.

(ii) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than five (5) years or a fine of not more than fifty thousand dollars (\$50,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(3) Notwithstanding the limits on fines set in subdivisions (a)(1) and (2) of this section, if a person convicted under subdivision (a)(1) or subdivision (a)(2) of this section has derived or will derive pecuniary gain from commission of the offenses, then he or she may be sentenced to pay a fine not to exceed two (2) times the amount of the pecuniary gain.

(b) **CIVIL PENALTIES.** The department is authorized to institute a civil action in any court of competent jurisdiction to accomplish any or all of the following:

(1) Restrain any violation of or compel compliance with the provisions of this subchapter and of any rules, regulations, orders, permits, licenses, or plans issued pursuant to this subchapter;

(2) Affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter;

(3) Recover all costs, expenses, and damages to the department and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including natural resource damages;

(4) Assess civil penalties in an amount not to exceed ten thousand dollars (\$10,000) per day for violations of this subchapter and of any rules, regulations, permits, or plans issued pursuant to this subchapter; or

(5) Recover civil penalties assessed pursuant to subsection (c) of this section.

(c) Any person who violates any provision of this subchapter and regulations, rules, permits, or plans issued pursuant to this subchapter may be assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation. Each day of a continuing violation may be deemed a separate violation for purposes of civil penalty assessment. No civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing in accordance with regulations adopted by the commission. All hearings and appeals arising under this subchapter shall be conducted in accordance with the procedures prescribed by §§ 8-4-205, 8-4-212, and 8-4-218 — 8-4-229. These administrative procedures may also be used

to recover all costs, expenses, and damages to the department and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including natural resource damages.

(d) As an alternative to the limits on civil penalties set in subsections (b) and (c) of this section, if a person found liable in actions brought under subsection (b) or subsection (c) of this section has derived pecuniary gain from commission of the offenses, then he or she may be ordered to pay a civil penalty equal to the amount of the pecuniary gain.

(e)(1) All moneys collected as reimbursement for expenses, costs, and damages to the department shall be deposited into the operating fund of the department.

(2) All moneys collected as civil penalties pursuant to this section shall be deposited into the Hazardous Substance Remedial Action Trust Fund as provided by § 8-7-509.

(3)(A) The Director of the Arkansas Department of Environmental Quality, in his or her discretion, may authorize in-kind services or cash contributions as partial mitigation of cash penalties for use in projects or programs designed to advance environmental interests.

(B) The violator may provide in-kind services or cash contributions as directed by the department by utilizing the violator's own expertise, by hiring and compensating subcontractors to perform the in-kind services, by arranging and providing financing for the in-kind services, or by other financial arrangements initiated by the department in which the violator and the department retain no monetary benefit, however remote.

(C) The in-kind services shall not duplicate or augment services already provided by the department through appropriations of the General Assembly.

(4) All moneys collected to cover the costs, expenses, or damages of other agencies or subdivisions of the state, including natural resource damages, shall be distributed to the appropriate governmental entity.

(f) The culpable mental states referenced throughout this section shall have the definitions set out in § 5-2-202.

(g) Solicitation or conspiracy, as defined by the Arkansas Criminal Code at § 5-3-301 et seq. and § 5-3-401 et seq., to commit any criminal act proscribed by this section and §§ 8-4-103 and 8-7-204 shall be punishable as follows:

(1) Any solicitation or conspiracy to commit an offense under this section which is a misdemeanor shall be a misdemeanor subject to fines not to exceed fifteen thousand dollars (\$15,000) per day of violation or imprisonment for more than six (6) months, or both such fine and imprisonment;

(2) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of fifty thousand dollars (\$50,000) per day or imprisonment up to five (5) years shall be a felony subject to fines up to thirty-five thousand dollars (\$35,000) per day or imprisonment up to two (2) years, or both such fine and imprisonment;

(3) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of one hundred thousand

dollars (\$100,000) per day or imprisonment up to ten (10) years shall be a felony subject to fines up to seventy-five thousand dollars (\$75,000) per day or imprisonment up to seven (7) years, or both such fine and imprisonment; and

(4) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of two hundred fifty thousand dollars (\$250,000) per day or imprisonment up to twenty (20) years shall be a felony subject to fines up to one hundred fifty thousand dollars (\$150,000) per day or imprisonment up to fifteen (15) years, or both such fine and imprisonment.

(h) In cases considering suspension of sentence or probation, efforts or commitments by the defendant to remediate any adverse environmental effects caused by his or her activities may be considered by the court to be restitution as contemplated by § 5-4-301.

(i) A business organization and its agents or officers may be found liable under this section in accordance with the standards set forth in § 5-2-501 et seq. and sentenced to pay fines in accordance with the provisions of § 5-4-201(d) and (e).

History. Acts 1971, No. 237, § 11; 1983, No. 666, § 3; A.S.A. 1947, § 82-2711; Acts 1987, No. 529, § 2; 1991, No. 1057, §§ 4, 5; 1993, No. 731, § 4; 1995, No. 547, § 2; 1995, No. 895, § 5; 1999, No. 582, § 1; 2005, No. 1824, § 6.

A.C.R.C. Notes. Pursuant to § 1-2-207, subdivision (e)(3) of this section is set out above as amended by Acts 1995, No. 895, § 5. This subdivision was also amended by Acts 1995, No. 547, § 2, to read as follows:

“(e)(3)(A) The director, in his discretion, may accept in-kind services as partial mitigation of cash penalties for use in projects or programs designed to advance environmental interests.

“(B) The violator may provide in-kind services as directed by the department by utilizing the violator’s own expertise, by hiring and compensating subcontractors to perform the services, or by other financial arrangements in which the violator retains no monetary benefit, however remote.

“(C) The services shall not duplicate or augment services already provided by the department through appropriations of the General Assembly.”

Publisher’s Notes. Acts 1991, No. 1057, § 1, provided: “The General Assembly finds and determines that the criminal and civil penalties imposed by current law

do not accurately reflect the degree of concern which the state places upon its environmental resources. The current criminal penalties for hazardous waste and other violations are among the lowest in the nation. Civil penalties for violations of the state water, air, solid waste and hazardous waste pollution control statutes are set at the minimum necessary to receive federally delegated programs. In declaring itself “The Natural State,” the State of Arkansas demonstrated its commitment to its environmental resources. This commitment must be reflected in its environmental enforcement program. This act shall be liberally construed so as to achieve remedial intent.”

Acts 1991, No. 1057, § 5, is also codified as §§ 8-4-103(h)-(k) and 8-7-204 (f)-(i).

Acts 1993, No. 731, § 1, provided: “The State of Arkansas has an abundance of environmental concerns which need research and study, as well as concerns which have an immediate remedy but are absent funds to facilitate their implementation. This amendment serves to clarify the existing use of in-kind services as penalties, to include cash contributions for use in worthy environmental projects and to advance environmental interests.”

Cross References. Arkansas Criminal Code, § 5-1-101 et seq.

Penalties and procedures, § 8-6-902.

CASE NOTES

ANALYSIS

Liability.

Statute of Limitations.

Liability.

Anyone who disposes of, transports, processes or abandons waste in a manner or place likely to cause water or air pollution, is liable to the state for costs, expenses and damages, including natural resource damages. *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

Statute of Limitations.

Court denied summary judgment to the oil company, which was one of the defen-

dants in an action by the landowners for damages from defendants' dumping, as the Arkansas Solid Waste Management Act (ASWMA), § 8-6-201 et seq., contained no limitations period; the court believed that it was doubtful that the Arkansas Legislature intended that a limitations period specifically limited to actions founded on contract or liability, as set forth in § 16-56-105(3), should operate to reach out and limit the reach of the ASWMA. *Sewell v. Phillips Petro. Co.*, 197 F. Supp. 2d 1160 (W.D. Ark. 2002).

8-6-205. Illegal actions — Rebuttable presumption — Acts or omissions by third party.

(a) It shall be illegal for any person:

(1) To violate any provision of this subchapter or any rule, regulation, or order of the Arkansas Pollution Control and Ecology Commission issued pursuant to this subchapter or of a permit issued under this subchapter by the Arkansas Department of Environmental Quality;

(2) To construct, install, alter, modify, use, or operate any solid waste processing or disposal facility or disposal site without a permit from the department;

(3) To dispose of solid wastes at any disposal site or facility other than a disposal site or facility for which a permit has been issued by the department. However, no provision of this subchapter shall be construed so as to prevent an individual from disposing of solid wastes resulting from his or her own household activities on his or her own land if the disposal does not create a public or private nuisance or a hazard to health and does not violate a city ordinance or other law and does not involve the open dumping of garbage;

(4) To dump, deposit, throw, or in any manner leave or abandon any solid wastes, including, but not limited to, garbage, tin cans, bottles, rubbish, refuse, or trash upon property owned by another person without the written permission of the owner or occupant of the property or upon any public highway, street, road, public park or recreation area, or any other public property except as designated for disposal of waste; or

(5) To sort, collect, transport, process, or dispose of solid waste contrary to the rules, regulations, or orders of the department or in such a manner or place as to create or be likely to create a public nuisance or a public health hazard or to cause or be likely to cause water or air pollution within the meaning of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

(b) There is created a rebuttable presumption that shall arise in any administrative, civil, or criminal action under this subchapter to the effect that, if it can be proved that one (1) or more items of solid waste bear the name or names of one (1) or more persons in such a form as to indicate that the person or persons were the owners of those items and those items were unlawfully disposed of, then the person or persons are presumed to have committed the unlawful act of disposal.

(c) No person shall be liable for any violation of this subchapter or of any rule, regulation, or order of the commission issued pursuant to this subchapter if the violation results solely from the act or omission of a third party, unless the person has knowingly allowed the violation to occur through acquiescence, acts, or omissions.

History. Acts 1971, No. 237, § 10; 1983, No. 666, § 2; A.S.A. 1947, § 82-2710; Acts 1987, No. 730, § 1; 1989, No. 260, § 2; 1995, No. 547, § 3; 1997, No.

1206, § 1; 2001, No. 1069, § 1; 2009, No. 1199, § 6.

Cross References. Theft of recyclable materials, § 5-36-121.

CASE NOTES

ANALYSIS

Jury Instructions.
Liability.

Jury Instructions.

The trial court erroneously instructed the jury that the alternative violations in subdivisions (a)(3)-(5) were not separate offenses but alternative means of committing one offense, while the state’s charge tracked only the language set out in subdivision (a)(4); thus, there was no way to know whether the jury found defendant guilty of disposal without a permit (subdivision (a)(3)), disposal of waste on another’s property (subdivision (a)(4)), or creating a public nuisance, hazard, or polluted condition (subdivision (a)(5)). *Renfro v. State*, 331 Ark. 253, 962 S.W.2d 745 (1998).

er’s property (subdivision (a)(4)), or creating a public nuisance, hazard, or polluted condition (subdivision (a)(5)). *Renfro v. State*, 331 Ark. 253, 962 S.W.2d 745 (1998).

Liability.

Anyone who disposes of, transports, processes or abandons waste in a manner or place likely to cause water or air pollution, is liable to the State for costs, expenses and damages, including natural resource damages. *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

Cited: *Patton v. TPI Petroleum, Inc.*, 356 F. Supp. 2d 921 (E.D. Ark. 2005).

8-6-206. Private right of action.

Any person adversely affected by a violation of this subchapter or of any rules, regulations, or orders issued pursuant thereto shall have a private right of action for relief against the violation.

History. Acts 1971, No. 237, § 12; A.S.A. 1947, § 82-2712.

CASE NOTES

ANALYSIS

Available Relief.
Statute of Limitations.

Available Relief.

Private rights of action under the Arkansas Solid Waste Management Act, § 8-6-206, are not limited to seeking injunctive relief to the exclusion of damages. *Patton v. TPI Petroleum, Inc.*, 356 F. Supp. 2d 921 (E.D. Ark. 2005).

Statute of Limitations.

Court denied summary judgment to the oil company, which was one of the defen-

dants in an action by the landowners for damages from defendants' dumping, as the Arkansas Solid Waste Management Act (ASWMA), § 8-6-201 et seq., contained no limitations period; the court believed that it was doubtful that the Arkansas Legislature intended that a limitations period specifically limited to actions founded on contract or liability, as set forth in § 16-56-105(3), should operate to reach out and limit the reach of the ASWMA. *Sewell v. Phillips Petro. Co.*, 197 F. Supp. 2d 1160 (W.D. Ark. 2002).

8-6-207. Powers and duties of the department and commission generally.

(a) The Arkansas Department of Environmental Quality or its successor shall have the following powers and duties:

(1) To administer and enforce all laws, rules, and regulations relating to solid waste disposal;

(2) To advise, consult, and cooperate with appropriate federal, state, interstate, and local units of government and with affected groups and industries in the formation of plans and the implementation of a solid waste management program pursuant to this subchapter;

(3) To accept and administer loans and grants from the United States Government and from such other sources as may be available to the Arkansas Pollution Control and Ecology Commission for the planning, construction, and operation of solid waste management systems and disposal facilities;

(4) To develop a statewide solid waste management plan in cooperation with municipal and county governments and solid waste boards which gives emphasis to regional planning, where feasible;

(5) To require to be submitted and to approve plans and specifications for the construction and operation of solid waste disposal facilities and sites and to inspect the construction and operation thereof;

(6) To issue, continue in effect, revoke, modify, or deny, under such conditions as the department may prescribe, permits for the establishment, construction, operation, or maintenance of solid waste management systems, disposal sites, and facilities;

(7) To make investigations, inspections, and to hold such hearings, after notice, as the department may deem necessary or advisable for the discharge of duties under this subchapter and to ensure compliance with this subchapter and any orders, rules, and regulations issued pursuant thereto;

(8) To make, issue, modify, revoke, and enforce orders, after notice and opportunity for adjudicatory review by the commission, prohibiting

violation of any of the provisions of this subchapter or of any rules and regulations issued pursuant to this subchapter, and to require the taking of such remedial measures for solid waste disposal as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter;

(9) To institute proceedings in the name of the department in any court of competent jurisdiction to compel compliance with and to restrain violation of the provisions of this subchapter or any rules, regulations, and orders issued pursuant thereto and to require the taking of such remedial measures for solid waste disposal as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter;

(10) To initiate, conduct, and support research, demonstration projects, and investigations and to coordinate with all state agency research programs pertaining to solid waste disposal and management systems;

(11) To make periodic inspections not less than quarterly in accordance with regulations promulgated by the commission of all solid waste disposal facilities or sites permitted under this subchapter to ensure compliance with all requirements of this subchapter and the regulations promulgated under this subchapter and to make a final inspection of closed or abandoned solid waste disposal sites to determine compliance with rules and regulations for proper closure and proper filling and drainage of the site;

(12) To issue, continue in effect, revoke, modify, or deny, under such conditions as the department may prescribe, permits for the establishment, construction, operation, or maintenance of transfer stations;

(13) To regulate and license persons engaged in the business of transporting used and waste tires;

(14) To establish minimum standards for the operation of a solid waste collection system; and

(15) Upon the petition of a solid waste board or upon the department's own initiative to revoke, modify, or deny a permit for a solid waste disposal facility or a permit for any other element of a solid waste management system based upon noncompliance with an approved regional solid waste management plan of a solid waste board.

(b) The commission shall have the following powers and duties:

(1)(A) Promulgation of rules and regulations implementing the substantive statutes charged to the department for administration.

(B) In promulgation of such rules and regulations, prior to the submittal to public comment and review of any rule, regulation, or change to any rule or regulation that is more stringent than federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule or regulation on the people of the State of Arkansas, including those entities that will be subject to the regulation.

(C) The commission shall promptly initiate rulemaking proceedings to further implement the analysis required under subdivision (b)(1)(B) of this section.

(D) The extent of the analysis required under subdivision (b)(1)(B) of this section shall be defined in the commission's rulemaking required under subdivision (b)(1)(C) of this section. It will include a written report which shall be available for public review along with the proposed rule in the public comment period.

(E) Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent regulation;

(2) Promulgation of rules, regulations, and procedures not otherwise governed by applicable law which the commission deems necessary to secure public participation in environmental decision-making processes;

(3) Promulgation of rules and regulations governing administrative procedures for challenging or contesting department actions;

(4) In the case of permitting or grants decisions, providing the right to appeal a permitting or grants decision rendered by the Director of the Arkansas Department of Environmental Quality or his or her delegatee;

(5) In the case of an administrative enforcement or emergency action, providing the right to contest any such action initiated by the director;

(6) Instruct the director to prepare such reports or perform such studies as will advance the cause of environmental protection in the state;

(7) Make recommendations to the director regarding overall policy and administration of the department, provided, however, that the director shall always remain within the plenary authority of the Governor;

(8) Upon a majority vote, initiate review of any director's decision;

(9) To establish policies and standards for effective solid waste disposal and management systems; and

(10) To adopt, after notice and public hearing, and to promulgate, modify, repeal, and enforce rules and regulations for the source reduction, minimization, recycling, collection, transportation, processing, storage, and disposal of solid wastes, including, but not limited to, the disposal site location and the construction, operation, and maintenance of the disposal site or disposal process as necessary or appropriate to implement or effectuate the purposes and intent of this subchapter and the powers and duties of the commission under this subchapter.

History. Acts 1971, No. 237, § 7; 1983, 1991, No. 751, § 3; 1997, No. 1219, § 8; No. 667, § 1; A.S.A. 1947, § 82-2707; Acts 1999, No. 1164, § 62.

RESEARCH REFERENCES

Ark. L. Rev. Case Note, Johnson v. to the NIMBY Syndrome, 45 Ark. L. Rev. Sunray Services, Inc.: Possible Solutions 657.

CASE NOTES

Cited: United States v. Vertac Chem. Corp., 489 F. Supp. 870 (E.D. Ark. 1980).

8-6-208. Existing rules, regulations, etc.

(a) All existing rules and regulations of the Arkansas Pollution Control and Ecology Commission relating to subjects embraced within this subchapter shall remain in full force and effect until expressly repealed, amended, or superseded by the commission.

(b) All orders entered, permits granted, and pending legal proceedings instituted by the commission relating to subjects embraced within this subchapter shall remain unimpaired and in full force and effect until superseded by actions taken by the commission under this subchapter.

(c) No existing civil or criminal remedies, public or private, for any wrongful action shall be excluded or impaired by this subchapter. Nothing in this subchapter shall be construed to limit or supersede the provisions of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., or any action taken by the commission under the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

History. Acts 1971, No. 237, § 12; A.S.A. 1947, § 82-2712.

CASE NOTES

Cited: Bryant v. Mathis, 310 Ark. 737, 839 S.W.2d 528 (1992); Dep't of Env'tl. Quality, 342 Ark. 380, 40 S.W.3d 731 (2000); Romine v. Ark. S.W.3d 731 (2000).

8-6-209. Local standards.

(a)(1) No municipality or county may, by ordinance, resolution, order, or otherwise, adopt standards for the location, design, construction, and maintenance of solid waste disposal sites and facilities that are more restrictive than those adopted by, under, or pursuant to this subchapter or any and all applicable laws, rules, regulations, or orders adopted by state law or incorporated by reference from federal law, the Arkansas Pollution Control and Ecology Commission under the provisions of this subchapter, or the regional solid waste management boards or districts, unless there exists a fully implemented comprehensive area-wide zoning plan, and corresponding laws or ordinances, covering the entire municipality or county.

(2) Municipal or county ordinances, resolutions, or orders effective as of the date of the passage of this act and more restrictive than regional or state standards shall remain in full force and effect for a period of six (6) months following the date of the passage of this act.

(3) Provided, also, that if a county or municipality adopts a comprehensive area-wide zoning plan and corresponding laws and ordinances covering the entire county or city as referred to in § 8-6-212(e), the

county or city may incorporate existing ordinances, resolutions, or orders in that comprehensive area-wide zoning plan.

(4) Otherwise, any and all such standards adopted by a municipality or county must be consistent with, in accordance with, and not more restrictive than said federal, state, and regional laws, rules, regulations, and orders. Any and all such municipalities or county ordinances, resolutions, orders, or standards contrary to this section shall be null, void, and repealed.

(b)(1) Subsection (a) of this section shall not apply if a municipality or county, by resolution, requests that the regional solid waste management board or regional solid waste management district for the municipality's or county's region adopt a more restrictive rule, regulation, order, or standard and such board or district either fails to hold a public hearing on the request within sixty (60) days of the request, or, after such public hearing, fails to take any action on the request within ninety (90) days of receipt of the request.

(2) If the board or district takes action on the request by approving, modifying, or denying the request within ninety (90) days of its receipt, the municipality or county shall be precluded from adopting and enforcing any more restrictive rule, regulation, order, or standard under subsection (a) of this section.

History. Acts 1971, No. 237, § 12; A.S.A. 1947, § 82-2712; Acts 1993, No. 1280, § 2.

Publisher's Notes. Acts 1993, No. 1280, § 1, provided: "The Arkansas General Assembly makes the following findings:

"(1) The present landfill capacity in the State of Arkansas is inadequate and is at or near the critical point;

"(2) As of January 1, 1993, the capacity in Arkansas was about four and one-half (4½) years of landfill life for fifty-seven (57) municipal solid waste landfills;

"(3) By the enactment of Arkansas Act 752 of 1991, the Regional Solid Waste Management Boards were established from the preceding Regional Solid Waste Boards and said Regional Solid Waste Boards were given additional powers and duties.

"(4) The stated purpose for the enactment of Arkansas Act 752 of 1991 was to protect the public health and the state's environmental quality by establishing regional solid waste management and planning. It was found that the preexisting system of relying upon solid waste management by individual counties and municipalities had fostered conditions in which certain areas of the state were

facing capacity shortages of crises proportions, while others experienced a surfeit of capacity with individual disposal facilities which could not muster the resources for environmentally responsible operations. Despite the efforts of the Regional Solid Waste Management Boards to date, those conditions remain true at this time.

"(5) Upon enacting Arkansas Act 752 of 1991 establishing the Regional Solid Waste Management Boards and providing for their powers and duties, the Seventy-eighth Arkansas General Assembly authorized the districts to issue rules and regulations which are consistent with and in accordance with, but no more restrictive than, all applicable environmental protection performance standards adopted by state law or incorporated by reference from federal law.

"(6) Despite the limitation that rules and regulations of the districts be consistent with and in accordance with, but no more restrictive than, the applicable state and federal law, pursuant to Arkansas Act 237 of 1971, Arkansas Code Annotated § 8-6-209 (Repl.1991), counties and municipalities retain the authority to adopt standards, by ordinance, resolution, or order, for the location, design, construction and maintenance of solid waste dis-

posal sites and facilities, that are more restrictive than those adopted by state law and by the Arkansas Pollution Control and Ecology Commission.

“(7) This authority vested in counties and municipalities has led in large part to the disparate environmental and economic concerns set out in Arkansas Act 752 of 1991 and summarized above and could thwart and jeopardize the purposes of Arkansas Act 752 of 1991 and its efforts to protect the public health and the state’s

environmental quality by establishing regional solid waste management and planning.”

In reference to the term “date of passage of this act,” Acts 1993, No. 1280 was signed by the Governor on April 21, 1993, and became effective from and after its passage and approval.

Meaning of “this act”. Acts 1993, No. 1280, codified as §§ 8-6-209, 8-6-211, 8-6-212, and 8-6-222.

RESEARCH REFERENCES

Ark. L. Rev. Case Note, Johnson v. Sunray Services, Inc.: Possible Solutions

to the NIMBY Syndrome, 45 Ark. L. Rev. 657.

CASE NOTES

ANALYSIS

Construction.

Adoption of Additional Standards.

Landfill Location.

Ordinance Upheld.

Construction.

There was no repeal of this section due to a direct conflict with inconsistent provisions in Act 870 of 1989 and Act 752 of 1991, for this section can be harmonized with the existing Solid Waste Management Act, in that, while regional boards are authorized to issue landfill permits under the Act, this does not preclude local governments from adopting additional landfill standards. Johnson v. Sunray Servs., Inc., 306 Ark. 497, 816 S.W.2d 582 (1991) (decision under prior law).

Adoption of Additional Standards.

Neither Act 870 of 1989 nor Act 752 of 1991, now codified at § 8-6-201 et seq.,

expressly repealed the counties’ authority to adopt more stringent landfill standards under this section. Johnson v. Sunray Servs., Inc., 306 Ark. 497, 816 S.W.2d 582 (1991) (decision under prior law).

Landfill Location.

The Planning Board does have authority to prepare a zoning ordinance for the county, but that is not exclusive authority which divests the quorum court of its power to adopt standards for the location of landfill sites. Johnson v. Sunray Servs., Inc., 306 Ark. 497, 816 S.W.2d 582 (1991) (decision under prior law).

Ordinance Upheld.

Quorum court correctly found that there was a rational relationship between the ordinance which endorsed a two-mile buffer zone and the protection of main water sources and pollution containment. Johnson v. Sunray Servs., Inc., 306 Ark. 497, 816 S.W.2d 582 (1991) (decision under prior law).

8-6-210. Agreements authorized.

(a) Any two (2) or more municipalities, counties, or other public agencies may enter into agreements with one another for joint or cooperative action pursuant to a solid waste management system.

(b) Any agreement shall specify the following:

(1) Its duration;

(2) The precise organization, composition, and nature of any separate legal or administrative entity created by the agreement, together with the powers delegated thereto, provided that the entity may be legally created;

(3) Its purpose;

(4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget, provided that the legal entity may incur indebtedness for the lease or purchase of land, equipment, and other expenses necessary to the operation of a solid waste management system, or any part of it;

(5) The permissible methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon the partial or complete termination; and

(6) Any other necessary and proper matters.

History. Acts 1971, No. 237, § 4; A.S.A. 1947, § 82-2704.

8-6-211. Municipal solid waste management systems.

(a) All municipalities shall provide a solid waste management system which will adequately provide for the collection and disposal of all solid wastes generated or existing within the incorporated limits of the municipality or in the area to be served and in accordance with the rules, regulations, and orders of the Arkansas Pollution Control and Ecology Commission. The governing body of the municipality may enter into agreements with one (1) or more other municipalities, counties, a regional solid waste management district, private persons or trusts, or with any combination thereof, to provide a solid waste management system, or any part of a system, for the municipality, but the agreement shall not relieve the parties of their responsibilities under this subchapter.

(b)(1) The governing body of the municipality shall have the authority to levy and collect such fees and charges and require such licenses as may be appropriate to discharge its responsibility under this subchapter, and the fees, charges, and licenses shall be based on a fee schedule as set forth in an ordinance.

(2)(A) Without limitation on otherwise appropriate collection procedures, a municipality may collect its fees and service charges through either its own system of periodic billing or by entering the fees and service charges on the tax records of the county and then collecting the fees and service charges with the personal property taxes on an annual basis.

(B) Further, any fees and service charges billed periodically by the cities which are more than ninety (90) days delinquent on November 1 of each year may be entered on the tax records of the county as a delinquent periodic fee or service charge and may be collected by the county with personal property taxes.

(3)(A)(i) In counties where the fees are entered on the tax records for yearly collection or if the periodic fees and service charges are more than ninety (90) days delinquent as of November 1, the fees and service charges shall be entered on the tax records of the county by the county clerk and shall be collected by the county collector with the personal property taxes.

(ii) The fees and service charges to be collected shall be certified to the county clerk by December 1 each year by an appropriate municipal official or the mayor.

(iii) No county collector shall accept payment of any property taxes where annual fees and service charges or delinquent periodic fees and service charges appear on the county tax records of a taxpayer unless the fees and service charges due are also receipted.

(iv) These funds shall be receipted and deposited into an official account of the county collector, who shall settle the account at least quarterly.

(B) Annual fees and service charges or the delinquent periodic fees and service charges which remain unpaid after the time other property taxes are due shall constitute a lien on the real and personal property of the taxpayer which may be enforced against such property by an action in circuit court.

(C) The amount of any fees and service charges collected shall then be paid to the municipality by the county collector, less four percent (4%) to be retained by the county collector.

(D) In addition, when the county collector maintains a separate tax book for these fees and charges, the county collector may charge an additional two dollars and fifty cents (\$2.50) for collection.

(c) Municipalities may accept and disburse funds derived from grants from the United States Government or state governments, from private sources, or from moneys that may be appropriated from any available funds for the installation and operation of a solid waste management system or any part of a solid waste management system.

(d) Municipalities are authorized to contract for the purchase of land, facilities, vehicles, and machinery necessary to the installation and operation of a solid waste management system either individually or as a party to a regional or county solid waste authority.

(e) The governing body of a municipality shall have the right to establish policies for and enact laws concerning all phases of the operation of a solid waste management system, including hours of operation, the character and kinds of wastes accepted at the disposal site, the separation of wastes according to type by those generating them prior to collection, the type of container for storage of wastes, the prohibition of the diverting of recyclable materials by persons other than the generator or collector of the recyclable material, the prohibition of burning of wastes, the pretreatment of wastes, and such other rules as may be necessary or appropriate, so long as the laws, policies, and rules are consistent with, in accordance with, and not more restrictive than those adopted by, under, or pursuant to this subchapter or any laws, rules, regulations, or orders adopted by state law or incorporated by reference from federal law, the commission, or the regional solid waste management boards or regional solid waste management districts, unless:

(1) There exists a fully implemented comprehensive area-wide zoning plan and corresponding laws or ordinances covering the entire municipality; or

(2) The municipality has made a request to the board or district to adopt a more restrictive rule, regulation, order, or standard and no public hearing has been held within sixty (60) days or the request has not been acted upon within ninety (90) days.

History. Acts 1971, No. 237, § 5; A.S.A. 1947, § 82-2705; Acts 1991, No. 1007, § 1; 1993, No. 1280, § 3; 1995, No. 547, § 4; 2001, No. 1720, § 2.

Publisher's Notes. Acts 1993, No. 1280, § 1, provided: "The Arkansas General Assembly makes the following findings:

"(1) The present landfill capacity in the State of Arkansas is inadequate and is at or near the critical point;

"(2) As of January 1, 1993, the capacity in Arkansas was about four and one-half (4½) years of landfill life for fifty-seven (57) municipal solid waste landfills;

"(3) By the enactment of Arkansas Act 752 of 1991, the Regional Solid Waste Management Boards were established from the preceding Regional Solid Waste Boards and said Regional Solid Waste Boards were given additional powers and duties.

"(4) The stated purpose for the enactment of Arkansas Act 752 of 1991 was to protect the public health and the state's environmental quality by establishing regional solid waste management and planning. It was found that the preexisting system of relying upon solid waste management by individual counties and municipalities had fostered conditions in which certain areas of the state were facing capacity shortages of crises proportions, while others experienced a surfeit of capacity with individual disposal facilities which could not muster the resources for environmentally responsible operations. Despite the efforts of the Regional Solid Waste Management Boards to date, those conditions remain true at this time.

"(5) Upon enacting Arkansas Act 752 of 1991 establishing the Regional Solid Waste Management Boards and providing for their powers and duties, the Seventy-eighth Arkansas General Assembly authorized the districts to issue rules and regulations which are consistent with and in accordance with, but no more restrictive than, all applicable environmental protection performance standards adopted by state law or incorporated by reference from federal law.

"(6) Despite the limitation that rules and regulations of the districts be consistent with and in accordance with, but no more restrictive than, the applicable state and federal law, pursuant to Arkansas Act 237 of 1971, Arkansas Code Annotated § 8-6-209 (Repl.1991), counties and municipalities retain the authority to adopt standards, by ordinance, resolution, or order, for the location, design, construction and maintenance of solid waste disposal sites and facilities, that are more restrictive than those adopted by state law and by the Arkansas Pollution Control and Ecology Commission.

"(7) This authority vested in counties and municipalities has led in large part to the disparate environmental and economic concerns set out in Arkansas Act 752 of 1991 and summarized above and could thwart and jeopardize the purposes of Arkansas Act 752 of 1991 and its efforts to protect the public health and the state's environmental quality by establishing regional solid waste management and planning."

Cross References. Theft of recyclable materials, § 5-36-121.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Note, Environmental Law — Conservation — New Jersey Mandatory Statewide Source Separation and Recycling of Solid Waste Act, 11 U. Ark. Little Rock L.J. 733.

Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Criminal Law, 24 U. Ark. Little Rock L. Rev. 429.

CASE NOTES

Fees.

The Arkansas County Quorum Court was not authorized by law in 1989 to collect a waste fee by imposing it as a surcharge on the personal property taxes the residents of the county must pay. Ark.

County v. Burris, 308 Ark. 490, 825 S.W.2d 590 (1992).

Cited: Laidlaw Waste Sys. v. City of Ft. Smith, 742 F. Supp. 540 (W.D. Ark. 1990); Snell v. State, 290 Ark. 503, 721 S.W.2d 628 (1986).

8-6-212. County solid waste management systems.

(a)(1) Each county of the state is authorized to provide and shall provide a solid waste management system adequate to collect and dispose of all solid wastes generated or existing within the boundaries of the county and outside the corporate limits of any municipality in the county.

(2) By agreement or contractual arrangement, the county may assume responsibility for solid wastes generated within municipalities whether within its county or other counties.

(3) A county may enter into agreements with other counties, one (1) or more municipalities, a regional solid waste management district, governmental agencies, private persons, trusts, or with any combination thereof, to provide a solid waste management system for the county or any portion thereof, but the agreement shall not relieve the parties to the agreement of their responsibilities under this subchapter.

(b)(1)(A) A county government may levy and collect the fees and charges and require the licenses that are appropriate to discharge the county's responsibility for a solid waste management system or any portion thereof. Each fee, charge, and license shall be based on a fee schedule contained in an ordinance.

(B)(i) A county may provide by ordinance that responsibility for payment of the fees and charges rests on the occupant of the property.

(ii) The ordinance shall provide that the owner of the property is the occupant unless, before the fifth day of the month of service, the owner registers with the county the name and address of the tenant occupying the property and either the date that the lease is to expire or that the lease is month-to-month.

(2)(A)(i) A county government may collect its fees and service charges by using its own system of periodic billing or by entering the fees and service charges on the county tax records and then collecting the fees and service charges annually with the personal property taxes.

(ii)(a) If a tenant has been registered as an occupant under subdivision (b)(1)(B)(ii) of this section, then the tenant is responsible for paying the fees and charges, and the county may collect the fees and charges annually from the tenant's personal property taxes.

(b) The county may also assess an additional annual fee of ten percent (10%) for invoicing and collecting the delinquent fees and charges from the tenant rather than the owner.

(iii) If a tenant has not been registered as an occupant under subdivision (b)(1)(B)(ii) of this section, then the owner is responsible for paying the fees and charges, and the county may collect the fees and charges annually from the owner's personal property taxes or real property taxes.

(B) Further, a fee or service charge billed periodically by the county that is more than ninety (90) days delinquent or is delinquent as of the date set by the quorum court by ordinance may be entered on the tax records of the county as a delinquent periodic fee or service charge and may be collected by the county with personal property taxes or with real property taxes from the owner of the property in accordance with a county ordinance, except as provided in subdivision (b)(1)(B)(ii) of this section.

(C)(i) A county collector shall not accept payment of property taxes if an annual fee or service charge or a delinquent periodic fee or service charge appears on the county tax records of a taxpayer unless the fee or service charge due is also receipted.

(ii) These funds shall be receipted and deposited into an official account of the county collector, who shall settle the account at least quarterly.

(iii) The amount of the fees and service charges collected shall be paid to the county treasurer by the county collector, less four percent (4%) to be retained by the county collector. In addition, when the county collector maintains a separate tax book for the fees and charges, the county collector may charge an additional two dollars and fifty cents (\$2.50) for collection.

(3)(A) In counties in which the fees are entered on the tax records for yearly collection or if the periodic fees and service charges are more than ninety (90) days delinquent or are delinquent as of the date set by the quorum court by ordinance, the fees and service charges shall be entered on the tax records of the county by the county clerk and shall be collected by the county collector with the personal property taxes or with real property taxes from the owner of the property in accordance with a county ordinance, except as provided in subdivision (b)(1)(B)(ii) of this section.

(B) The fees and service charges to be collected shall be certified to the county clerk by December 1 each year by an appropriate municipal official or the mayor.

(4) Annual fees and service charges or the delinquent periodic fees and service charges which remain unpaid after the time other property taxes are due shall constitute a lien on the real and personal property of the taxpayer which may be enforced against such property by an action in circuit court.

(c) A county may accept and disburse funds derived from federal or state grants, from private sources, or from moneys that may be appropriated from any available funds for the installation and operation of a solid waste management system or any part thereof.

(d) A county is authorized to contract for the lease or purchase of land, facilities, and vehicles for the operation of a solid waste manage-

ment system either for the county or as a party to a regional solid waste authority.

(e) A county shall have the right to issue orders, to establish policies for, and to enact ordinances concerning all phases of the operation of a solid waste management system, including hours of operation, the character and kinds of wastes accepted at the disposal site, the separation of wastes according to type by those generating them prior to collection, the type of container for storage of wastes, the prohibition of the diverting of recyclable materials by persons other than the generator or collector of the recyclable materials, the prohibition of burning of wastes, the pretreatment of wastes, and such other rules as may be necessary or appropriate, so long as such orders, policies, and ordinances are consistent with, in accordance with, and not more restrictive than, those adopted by, under, or pursuant to this subchapter or any other laws, rules, regulations, or orders adopted by state law or incorporated by reference from federal law, the Arkansas Pollution Control and Ecology Commission, or the regional solid waste management boards or regional solid waste management districts, unless:

(1) There exists a fully implemented comprehensive area-wide zoning plan and corresponding laws or ordinances covering the entire county; or

(2) The county has made a request to the board or district to adopt a more restrictive rule, regulation, order, or standard and no public hearing has been held within sixty (60) days or the request has not been acted upon within ninety (90) days.

History. Acts 1971, No. 237, § 6; 1983, No. 612, § 1; 1985, No. 946, § 1; A.S.A. 1947, § 82-2706; Acts 1991, No. 1007, § 2; 1993, No. 1280, § 4; 1995, No. 547, § 5; 2001, No. 1720, § 3; 2005, No. 1272, § 1; 2011, No. 174, § 1.

Publisher's Notes. Acts 1993, No. 1280, § 1, provided: "The Arkansas General Assembly makes the following findings:

"(1) The present landfill capacity in the State of Arkansas is inadequate and is at or near the critical point;

"(2) As of January 1, 1993, the capacity in Arkansas was about four and one-half (4½) years of landfill life for fifty-seven (57) municipal solid waste landfills;

"(3) By the enactment of Arkansas Act 752 of 1991, the Regional Solid Waste Management Boards were established from the preceding Regional Solid Waste Boards and said Regional Solid Waste Boards were given additional powers and duties.

"(4) The stated purpose for the enactment of Arkansas Act 752 of 1991 was to protect the public health and the state's

environmental quality by establishing regional solid waste management and planning. It was found that the preexisting system of relying upon solid waste management by individual counties and municipalities had fostered conditions in which certain areas of the state were facing capacity shortages of crises proportions, while others experienced a surfeit of capacity with individual disposal facilities which could not muster the resources for environmentally responsible operations. Despite the efforts of the Regional Solid Waste Management Boards to date, those conditions remain true at this time.

"(5) Upon enacting Arkansas Act 752 of 1991 establishing the Regional Solid Waste Management Boards and providing for their powers and duties, the Seventy-eighth Arkansas General Assembly authorized the districts to issue rules and regulations which are consistent with and in accordance with, but no more restrictive than, all applicable environmental protection performance standards adopted by state law or incorporated by reference from federal law.

“(6) Despite the limitation that rules and regulations of the districts be consistent with and in accordance with, but no more restrictive than, the applicable state and federal law, pursuant to Arkansas Act 237 of 1971, Arkansas Code Annotated § 8-6-209 (Repl.1991), counties and municipalities retain the authority to adopt standards, by ordinance, resolution, or order, for the location, design, construction and maintenance of solid waste disposal sites and facilities, that are more restrictive than those adopted by state law and by the Arkansas Pollution Con-

trol and Ecology Commission.

“(7) This authority vested in counties and municipalities has led in large part to the disparate environmental and economic concerns set out in Arkansas Act 752 of 1991 and summarized above and could thwart and jeopardize the purposes of Arkansas Act 752 of 1991 and its efforts to protect the public health and the state’s environmental quality by establishing regional solid waste management and planning.”

Cross References. Theft of recyclable materials, § 5-36-121.

RESEARCH REFERENCES

Ark. L. Rev. Case Note, Johnson v. Sunray Services, Inc.: Possible Solutions to the NIMBY Syndrome, 45 Ark. L. Rev. 657.

U. Ark. Little Rock L.J. Note, Environmental Law — Conservation — New Jersey Mandatory Statewide Source Separation and Recycling of Solid Waste Act, 11 U. Ark. Little Rock L.J. 733.

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the residents of the county must pay. Ark. County v. Burris, 308 Ark. 490, 825 S.W.2d 590 (1992).

Cited: Ark. County v. Burris, 308 Ark. 490, 825 S.W.2d 590 (1992).

8-6-213. [Repealed.]

Publisher’s Notes. This section, concerning permit procedure generally, was repealed by Acts 1995, No. 547, § 9. The section was derived from Acts 1971, No.

237, § 8; 1983, No. 916, § 1; 1985, No. 1022, § 1; A.S.A. 1947, § 82-2708; Acts 1989, No. 531, § 2; 1991, No. 454, § 2.

8-6-214. Records and examinations.

(a) The owner or operator of any permitted facility or site shall establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment or methods, take such samples, perform such tests, and provide such other information to the Arkansas Department of Environmental Quality as the Director of the Arkansas Department of Environmental Quality may reasonably require.

(b) The department or any authorized employee or agent may examine and copy any books, papers, records, or memoranda pertaining to the operation of the facility or site.

(c) The department or any authorized employee or agent may enter upon any public or private property for the purpose of obtaining information or conducting surveys or investigations necessary or appropriate for the purpose of this subchapter.

(d)(1)(A) Any records, reports, or information obtained under this subchapter and any permits, permit applications, and related documentation shall be available to the public for inspection and copying.

(B) Upon a satisfactory showing to the director that the records, reports, permits, documentation, or information, or any part thereof, if made public, would divulge methods or processes entitled to protection as trade secrets, then the director shall consider, treat, and protect such records, reports, or information as confidential.

(2)(A) As necessary to carry out the provisions of this subchapter, information afforded confidential treatment may be transmitted under a continuing restriction of confidentiality to other officers, employees, or authorized representatives of this state or of the United States if the owner or operator of the facility to which the information pertains is informed at least two (2) weeks prior to the transmittal and if the information has been acquired by the department under the provisions of this subchapter.

(B) The provisions of this subdivision (d)(2) shall not be construed to limit the department's authority to release confidential information during emergency situations.

(3) Any violation of this subsection shall be unlawful and constitute a misdemeanor.

History. Acts 1971, No. 237, § 9; 1983, No. 666, § 1; A.S.A. 1947, § 82-2709; Acts 1999, No. 1164, § 63.

8-6-215 — 8-6-217. [Superseded.]

A.C.R.C. Notes. These sections, concerning transfer of permits, financial responsibility, and denial of application for issuance, transfer, or modification of permit, are deemed to be superseded by § 8-1-106, derived from Acts 1991, No. 454,

§ 1. These sections were derived from the following sources:

8-6-215. Acts 1989, No. 531, § 1.

8-6-216. Acts 1989, No. 531, § 1.

8-6-217. Acts 1989, No. 531, § 1.

8-6-218. [Repealed.]

Publisher's Notes. This section, concerning limitations on the issuance of permits for new landfills, was repealed by

Acts 1993, No. 1263, § 5. The section was derived from Acts 1991, No. 993, § 1.

For current law, see § 8-6-1501 et seq.

8-6-219. Applicants for permits — Applicability.

(a) An applicant for a new permit under this subchapter or the modification or transfer of a permit shall be a person, partnership, corporation, association, the State of Arkansas, a political subdivision of

the state, an improvement district, a sanitation authority, or a solid waste board.

(b) This section shall not apply to permits for landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry or wastes of a similar kind or character.

(c) This section shall apply to permit applications submitted after July 15, 1991.

History. Acts 1991, No. 751, § 4.

8-6-220. Yard waste — Definitions.

(a)(1)(A) Except as provided in subdivision (a)(2) of this section, it is illegal for yard waste to be placed in a solid waste management facility solely for the purpose of disposal, except for fugitive amounts of yard waste.

(B) A permitted solid waste landfill may collect landfill gas from the fugitive amounts of yard waste for conversion to energy.

(2)(A) If authorized by the Arkansas Department of Environmental Quality through a permit modification process including a public notice and comment period, yard waste may be accepted by a permitted solid waste landfill that operates a landfill gas-to-energy system for the recovery and use of landfill gas as a renewable energy fuel source.

(B) The department shall consider, at a minimum, the following before authorizing yard waste to be accepted by a solid waste landfill for disposal:

(i) The number and types of permitted compost facilities accepting yard waste within the service areas of the solid waste landfill;

(ii) The environmental impact of the proposed change in disposing of yard waste at a solid waste landfill instead of a permitted compost facility;

(iii) The financial impact to each permitted compost facility located within the service area of the solid waste landfill;

(iv) Whether the regional solid waste management board hosting the solid waste landfill and hosting a permitted compost facility within the solid waste landfill's service area supports the request;

(v) The amount of yard waste the solid waste landfill intends to accept and the basis for estimating the volume of yard waste to be disposed in the solid waste landfill;

(vi) The financial impact to residents and industry within the service area of the solid waste landfill;

(vii) The location of the solid waste landfill;

(viii) The location within the solid waste landfill for the placement of yard waste;

(ix) The plans to offset the effects of disposing of yard waste on the volume reduction for municipal waste disposal;

(x) A description and timeline for the landfill gas collected from the yard waste to become a renewable energy fuel source;

(xi) The design and efficiency of the landfill gas collection system;

(xii) A list of purchase power agreements that guarantee the collection and use of the landfill gas collected from the yard waste for energy conversion; and

(xiii) Other information as may be required by the department.

(C) Landfill gas recovered through the landfill gas-to-energy system shall be utilized for the generation of electricity or used as a substitute for conventional fuels.

(b)(1) In addition to composting requirements for regional solid waste management districts set forth in § 8-6-719, each district shall furnish yard waste reduction or usage and/or opportunities to ensure that its residents are provided with the availability to choose, based upon need by population or area, ways and means of usage, reduction, reuse, or composting of yard waste.

(2) Such choices of yard waste reduction or usage shall be submitted to the department for approval and shall become an integral part of the district's solid waste management plan.

(c) As used in this section:

(1) "Fugitive amounts of yard waste" means small quantities that escape the approved methods of usage, reduction, reuse, or composting of yard waste;

(2) "Landfill gas-to-energy system" means the process of collecting, storing, and converting landfill gas to electricity for a direct fuel use or other use as a substitute for conventional fuels, including without limitation flaring for system testing, system maintenance, or proving capacity for an intended energy use; and

(3) "Yard waste" means grass clippings, leaves, and shrubbery trimmings.

History. Acts 1991, No. 751, § 4; 1993, No. 479, § 3; 1995, No. 547, § 6; 2009, No. 1220, § 1.

8-6-221. Review of rules and regulations.

All rules and regulations adopted under this subchapter shall be reviewed by the House Committee on Public Health, Welfare, and Labor and Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor.

History. Acts 1991, No. 751, § 4; 1997, No. 179, § 3.

8-6-222. Standards for sites and facilities.

Regional solid waste management boards may adopt more restrictive standards for the location, design, construction, and maintenance of solid waste disposal sites and facilities than the state government or the United States Government.

History. Acts 1993, No. 1280, § 5.

Publisher's Notes. Acts 1993, No. 1280, § 1, provided: "The Arkansas General Assembly makes the following findings:

"(1) The present landfill capacity in the State of Arkansas is inadequate and is at or near the critical point;

"(2) As of January 1, 1993, the capacity in Arkansas was about four and one-half (4½) years of landfill life for fifty-seven (57) municipal solid waste landfills;

"(3) By the enactment of Arkansas Act 752 of 1991, the Regional Solid Waste Management Boards were established from the preceding Regional Solid Waste Boards and said Regional Solid Waste Boards were given additional powers and duties.

"(4) The stated purpose for the enactment of Arkansas Act 752 of 1991 was to protect the public health and the state's environmental quality by establishing regional solid waste management and planning. It was found that the preexisting system of relying upon solid waste management by individual counties and municipalities had fostered conditions in which certain areas of the state were facing capacity shortages of crises proportions, while others experienced a surfeit of capacity with individual disposal facilities which could not muster the resources for environmentally responsible operations. Despite the efforts of the Regional Solid Waste Management Boards to date, those conditions remain true at this time.

"(5) Upon enacting Arkansas Act 752 of 1991 establishing the Regional Solid Waste Management Boards and providing for their powers and duties, the Seventy-eighth Arkansas General Assembly authorized the districts to issue rules and regulations which are consistent with and in accordance with, but no more restrictive than, all applicable environmental protection performance standards adopted by state law or incorporated by reference from federal law.

"(6) Despite the limitation that rules and regulations of the districts be consistent with and in accordance with, but no more restrictive than, the applicable state and federal law, pursuant to Arkansas Act 237 of 1971, Arkansas Code Annotated § 8-6-209 (Repl.1991), counties and municipalities retain the authority to adopt standards, by ordinance, resolution, or order, for the location, design, construction and maintenance of solid waste disposal sites and facilities, that are more restrictive than those adopted by state law and by the Arkansas Pollution Control and Ecology Commission.

"(7) This authority vested in counties and municipalities has led in large part to the disparate environmental and economic concerns set out in Arkansas Act 752 of 1991 and summarized above and could thwart and jeopardize the purposes of Arkansas Act 752 of 1991 and its efforts to protect the public health and the state's environmental quality by establishing regional solid waste management and planning."

8-6-223. Household hazardous waste storage or processing centers — Permit required.

(a) It is unlawful for a person to own or operate a household hazardous waste storage or processing center, as defined in § 8-6-203, without first obtaining from the Arkansas Department of Environmental Quality a transfer station permit or another permit that the department deems appropriate and that meets the requirements of this section.

(b)(1) The department shall not issue, modify, or renew a permit for a household hazardous waste storage or processing center regulated under this section without the permit applicant's first demonstrating to the department's satisfaction the applicant's financial ability to ensure proper removal and disposal of household hazardous waste located at the household hazardous waste storage or processing center under this section.

(2) The amount of financial assurance required under this section shall be equal to or greater than one hundred fifty percent (150%) of a third party's cost of disposal of the maximum permitted amount of household hazardous waste at a facility permitted under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., for the treatment, storage, and disposal of hazardous waste.

(3) A detailed disposal estimate under this section shall be prepared by an independent professional consultant.

(c) The permittee or applicant shall demonstrate financial ability to ensure proper removal and disposal of the household hazardous waste at its household hazardous waste storage or processing center by:

(1) Obtaining insurance that specifically covers the costs of disposal as required by this section;

(2) Obtaining a letter of credit;

(3) Obtaining a bond or other surety instrument;

(4) Creating a trust fund or escrow account;

(5) Combining any of the instruments in subdivisions (c)(1)-(4) of this section; or

(6) Any other financial instrument approved by the Director of the Arkansas Department of Environmental Quality.

(d) A financial instrument required by this section shall:

(1) Be posted to the benefit of the department;

(2) Provide that the financial instrument cannot be cancelled without sixty (60) days' prior written notice addressed to the department's legal division chief as evidenced by a signed, certified mail with a return receipt request; and

(3) Be reviewed by the department upon receipt of the cancellation notice to determine whether the department should initiate procedures to revoke or suspend the household hazardous waste storage or processing center's permit and whether the department should take possession of the funds guaranteed by the financial assurance mechanism.

(e) Before the department may release a financial assurance mechanism, the department shall inspect the household hazardous waste storage or processing center to determine to the department's satisfaction that no household hazardous waste is located at the household hazardous waste storage or processing center.

(f) The department is not responsible for the removal or disposal of household hazardous waste regulated under this section.

(g) Before an application for a permit is submitted to the department, a household hazardous waste storage or processing center shall

apply for a certificate of need from the regional solid waste management board that has jurisdiction over the proposed site and shall follow the procedures and rules established under § 8-6-708.

(h) A household hazardous waste storage or processing center shall submit a permit application to the department within ninety (90) days of the approval of the certificate of need.

(i) If a certificate of need is not approved under subsection (g) of this section or a final determination is made by the department denying the permit application, the household hazardous waste storage or processing center shall cease all collection, storage, or processing activity and properly dispose of or recycle all materials within ninety (90) days.

(j) By October 1, 2011, each household hazardous waste storage or processing center operating before July 27, 2011, shall:

(1) Submit to the department a plan to remove and dispose of all household hazardous waste located at the household hazardous waste storage or processing center in accordance with this section;

(2) Submit to the department a detailed cost estimate to remove and dispose of the household hazardous waste located at the household hazardous waste storage or processing center that meets the requirements of this section and is approved by the department; and

(3) Obtain financial assurance in accordance with subdivision (b)(2) of this section.

(k) A household hazardous waste storage or processing center that is operating before July 27, 2011, is exempt from obtaining a certificate of need under subsection (g) of this section.

(l) A permit under this section is not required for recyclable materials collection centers or systems that are provided by a city, county, solid waste district, or regional solid waste management district that stores household hazardous waste in quantities of less than one hundred ten gallons (110 gal.) of each household hazardous waste, not to exceed an accumulated waste amount of five thousand gallons (5,000 gal.) of liquid waste or ten thousand pounds (10,000 lbs.) of nonliquid waste.

History. Acts 2011, No. 1153, § 2.

SUBCHAPTER 3 — COUNTY SOLID WASTE MANAGEMENT SYSTEM AID FUND

SECTION.

8-6-301. Definitions.

8-6-302. County Solid Waste Management System Aid Fund.

8-6-303. Allocation of funds to counties — Distribution formula.

SECTION.

8-6-304. Eligibility to receive funds.

8-6-305. Failure to use funds — Misuse of funds.

8-6-306. Reapportionment of funds.

8-6-307. Transfer of funds — Exemption.

Effective Dates. Acts 1985 (1st Ex. Sess.), No. 5, § 3: July 1, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly, meeting in Extraordinary Ses-

sion, that various appropriations enacted by the General Assembly could have the effect of placing the Constitutional and Fiscal Agencies Fund in an unsound financial condition and that the mechanism

provided for in this act will help to alleviate such conditions and maintain the financial integrity of the state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1985.”

Acts 1985, No. 986, § 6: July 1, 1985.

Acts 1987, No. 551, § 4: Apr. 2, 1987. Emergency clause provided: “It is hereby found and determined by the Seventy-Sixth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that previous General

Assemblies have provided appropriations for the projects enumerated in this Act; that certain appropriations will expire before the adjournment of the Regular Session; and that if such appropriations expire, the programs authorized by such appropriations would cease, thereby depriving the citizens of the State of the benefits to be derived from such projects. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

8-6-301. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “County solid waste collection and disposal system” or “county solid waste management system” means and includes either of the following:

(A) A county owned and operated solid waste management and disposal system funded by moneys appropriated by the quorum court;

(B) A municipally owned and operated solid waste management and disposal system located within the county or adjoining counties operated under contract with the county whereby the county is provided access thereto, and the quorum court appropriates funds to defray the county’s share of the cost of operating the facility;

(C) A privately owned solid waste management and disposal system located within the county or an adjoining county in which the county has entered into a contract providing access and services of the facilities for the use and benefit of the county under the terms of which the county’s share of the operating cost is funded by an appropriation made by the quorum court of the county; or

(D) A solid waste collection and disposal system operated by two (2) or more counties or by one (1) or more counties and one (1) or more municipalities or operated by a private owner under a compact or agreement whereby each of the participating counties and municipalities has access to the facilities of the solid waste collection and disposal system and appropriates, through its governing body, funds to defray their respective shares of the cost of such facility;

(2) “Solid waste management system” means the entire process of storage, collection, transportation, processing, treatment, and disposal of solid waste.

History. Acts 1985, No. 986, § 1; A.S.A. 1947, § 13-564.

8-6-302. County Solid Waste Management System Aid Fund.

There is established in the State Treasury a fund to be known as the "County Solid Waste Management System Aid Fund", to consist of such special or general revenues or other moneys that may be deposited therein as provided by the General Assembly, to be used for the purpose of providing financial assistance to counties in the manner provided in this subchapter and for the establishment, expansion, maintenance, and operation of county solid waste collection and disposal systems.

History. Acts 1985, No. 986, § 1; A.S.A. Waste Management System Aid Fund, 1947, § 13-564. § 19-5-1019.

Cross References. County Solid

8-6-303. Allocation of funds to counties — Distribution formula.

All of the general revenues and special revenues and other funds deposited into the County Solid Waste Management System Aid Fund during each fiscal year shall be allocated by the Treasurer of State to each of the several counties in the state. The fund shall be distributed to such counties only as provided in this subchapter, on the basis of seventy-five percent (75%) divided equally among the seventy-five (75) counties of the state and twenty-five percent (25%) on the basis of population according to the most recent federal decennial census, with each county to receive an allocation thereof in the proportion that its population bears to the total population of the state.

History. Acts 1985, No. 986, § 2; A.S.A. 1947, § 13-565.

8-6-304. Eligibility to receive funds.

Before any county shall be eligible to receive its portion of the moneys in the County Solid Waste Management System Aid Fund during any fiscal year, the county, on or before the first day of the fiscal year, shall furnish the Treasurer of State the following information on forms to be developed by the Treasurer of State proof that:

(1) The county operates or is in the process of establishing a solid waste management system for that county and that the solid waste management system is available to serve the residents of the county and may be available for service to various cities and towns within the counties through interlocal agreements, compacts, or authorities;

(2) The quorum court of the county has established and approved a budget for the operation of the county solid waste management system for the fiscal year and has appropriated funds therefor in an amount sufficient to support not less than fifty percent (50%) of the costs of operating the solid waste management system. The funds appropriated

therefor will be used solely for the cost of establishing, operating, and maintaining the solid waste management system, for the hiring of personnel, and for the acquisition of equipment and land required to operate the solid waste management system and disposal; and

(3) The amount of funds allocated to the county for such year under this subchapter will be used exclusively for establishing, operating, and maintaining the solid waste management system and meeting the requirements of this subchapter, including the acquisition of land and the acquisition, maintenance, repair, and operation of equipment used in connection with the operation of the solid waste management system.

History. Acts 1985, No. 986, § 3; A.S.A. 1947, § 13-566.

8-6-305. Failure to use funds — Misuse of funds.

If any county fails during any fiscal year to expend an amount of county funds equal to at least fifty percent (50%) of the cost of operating its solid waste management system or uses any of the state funds allocated thereof under the provisions of this subchapter for any purpose other than as intended by this subchapter, then the county shall be ineligible to receive moneys during the next following fiscal year from the County Solid Waste Management System Aid Fund, but may make reapplication for state assistance funds during the year next following thereafter, upon offering the appropriate assurances in writing that the county will meet the full requirements of the intent and purposes of this subchapter in the use of the funds.

History. Acts 1985, No. 986, § 3; A.S.A. 1947, § 13-566.

8-6-306. Reapportionment of funds.

If any county fails to qualify for its proportionate share of the moneys in the County Solid Waste Management System Aid Fund during any fiscal year, then the moneys shall be reapportioned among the various counties which qualify to receive their proportionate share of the fund moneys during the fiscal year, in accordance with the distribution formula set forth in § 8-6-303. The Treasurer of State shall monthly distribute moneys to the eligible counties as authorized in this subchapter in the same manner as other county aid funds are distributed. The moneys shall be credited and used solely for the support and operation of the county solid waste management system.

History. Acts 1985, No. 986, § 4; 1985, (1st Ex. Sess.), No. 5, § 1; A.S.A. 1947, § 13-567.

8-6-307. Transfer of funds — Exemption.

(a) The moneys saved from Acts 1985, No. 994, which reduced contributions made by the state for state employees who are employed by a state agency funded, in whole or in part, with general revenues, shall be set aside and implemented by the Chief Fiscal Officer of the State and the Treasurer of State in the amount and in accordance with procedures set forth in this section.

(b)(1) Beginning the month after the month in which such reductions in retirement contributions occur, the Chief Fiscal Officer of the State shall determine the amount of the general revenue savings, by fund or fund account, based upon the previous month's payroll deductions for retirement contributions to the Public Employees' Retirement System.

(2) During each fiscal year, the Chief Fiscal Officer of the State shall cause to be transferred on his or her books and those of the Treasurer of State the amount of the monthly general revenue savings from each affected fund or fund account to the Revenue Holding Fund Account before the close of business on the last day of each month until an aggregate of five million dollars (\$5,000,000) of general revenue savings during each fiscal year has been transferred to the Revenue Holding Fund Account from those sources, and monthly transfers of the general revenue savings to the Revenue Holding Fund Account shall cease for the remainder of that fiscal year.

(c) The Treasurer of State shall, after providing for the distribution of general revenues available for distribution, transfer the total amount of such general revenue savings as certified to the Treasurer of State by the Chief Fiscal Officer of the State from the Revenue Holding Fund Account to the County Solid Waste Management System Aid Fund, to be used to make monthly distributions therefrom in the manner provided by law to the respective counties of this state to be used for the support of the county solid waste management system as provided in this subchapter.

(d) The Department of Correction is exempt from the provisions of this section.

History. Acts 1985, No. 986, § 4; 1985 (1st Ex. Sess.), No. 5, § 1; A.S.A. 1947, § 13-567; Acts 1987, No. 551, § 4.

Publisher's Notes. Acts 1985, No. 994, § 1, in part, reduced by two percent the employer contribution rates for the Arkansas Public Employees Retirement System, State, County, Municipal and School

Divisions, thereby making the contribution rate for each of these divisions 10 percent, nine percent, eight percent, and seven percent respectively.

Meaning of "this act". Acts 1985, No. 994, codified as §§ 24-3-103 [repealed] and 24-3-201 [repealed].

SUBCHAPTER 4 — LITTER CONTROL ACT**SECTION.**

8-6-401. Title.

8-6-402. Purpose.

8-6-403. Definitions.

SECTION.

8-6-404. Disposition of fines collected.

8-6-405. Injunction.

8-6-406. Littering and commercial litter-

SECTION.

- ing.
 8-6-407. Refuse hauling by uncovered vehicles.
 8-6-408. Discarding certain items prohibited.
 8-6-409. Prima facie evidence against drivers.
 8-6-410. Notice to the public required.
 8-6-411. Litter receptacles.
 8-6-412. Enforcement generally.
 8-6-413. Authority to take possession of discarded items — Notice.

SECTION.

- 8-6-414. Notification to motor vehicle owner and lienholders — Reclamation.
 8-6-415. Sale of junk motor vehicles and discarded items.
 8-6-416. Disposition of sale proceeds.
 8-6-417. [Repealed.]
 8-6-418. Possession or use of glass containers on navigable waterways — Definitions.

Effective Dates. Acts 1977, No. 883, § 20: Mar. 30, 1977. Emergency clause provided: "It is hereby found and declared by the General Assembly that the present laws pertaining to litter control and junk motor vehicles are inadequate and the immediate passage of this act is necessary to remedy such situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, safety and welfare shall be in effect from and after the date of its passage and approval."

Acts 2005, No. 75, § 4: Feb. 7, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that current resources are limited to enforce the Litter Control Act; that this act authorizes ille-

gal dumps control officers to issue citations for violations of the Litter Control Act; that this act clarifies the proper disposal of solid waste from illegal dumps; and that this act is immediately necessary to provide additional resources for the control of litter and the proper disposal of solid waste. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

8-6-401. Title.

This subchapter shall be cited and known as the "Litter Control Act".

History. Acts 1977, No. 883, § 1; A.S.A. 1947, § 82-3901.

8-6-402. Purpose.

The purpose of this subchapter is to accomplish the control of litter, inoperative household appliances, and junk motor vehicles throughout the state by regulating their disposal. The intent of this subchapter is to add to existing litter control, removal, and enforcement efforts and not to terminate or supplant such efforts, as well as the compatible goal of improving the quality of life for all the citizens of Arkansas.

History. Acts 1977, No. 883, § 1; A.S.A. 1947, § 82-3901.

8-6-403. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Abandoned" means property to which no person claims or exercises right of ownership;

(2) "Automobile repair shop" means any business which engages in the repair or servicing of vehicles;

(3) "Commercial littering" includes, but is not limited to, littering done by commercial businesses and manufacturing companies of every kind and description, including those businesses and persons who illegally dispose of litter or solid waste for other persons in return for money, fees, or other compensation;

(4) "Demolisher" means any person whose business, to any extent or degree, is to convert a motor vehicle or household appliance into processed scrap or scrap metal, into saleable parts, or otherwise to wreck or dismantle vehicles or appliances;

(5) "Disposable package or container" means all items or materials designed or intended to contain another item or product, but not designed or intended for permanent or continued use;

(6) "Enclosed building" means a structure surrounded by walls or one (1) continuous wall and having a roof enclosing the entire structure and includes a permanent appendage to the structure;

(7) "Household appliance" includes, but is not limited to, refrigerators, freezers, ranges, stoves, automatic dishwashers, clothes washers, clothes dryers, trash compacters, television sets, radios, hot water heaters, air conditioning units, commodes and other plumbing fixtures, and bed springs or other furniture;

(8) "Inoperative household appliance" means a discarded household appliance which by reason of mechanical or physical defects can no longer be used for its intended purpose and which is not serving a functional purpose;

(9) "Junk motor vehicle" means any vehicle which is inoperable, dismantled, or damaged and that is unable to start and move under its own power. Vehicles are excluded as long as they are registered and bear a current license permit;

(10)(A) "Litter" means all waste material which has been discarded or otherwise disposed of as prohibited in this subchapter, including, but not limited to, convenience food and beverage packages or containers, trash, garbage, all other product packages or containers, and other postconsumer solid wastes.

(B) "Litter" does not include wastes from the primary processing of mining, logging, sawmilling, or farming, the raising of poultry, manufacturing, or wastes deposited in proper receptacles;

(11) "Old vehicle tire" means a pneumatic tire in which compressed air is designed to support a load, but which because of wear, damage, or defect can no longer safely be used on a vehicle and which is either not serving a functional purpose or use or is not in an enclosed building, a salvage yard, or the actual possession of a demolisher;

(12) “Public place” means any area that is used or held out for use by the public, whether owned or operated by public or private interests;

(13) “Salvage yard” means any business that, in the course of its operation, maintains ten (10) or more vehicles to be used, wholly or in parts, to generate revenue for the operation of the business; and

(14) “Vehicle” includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

History. Acts 1977, No. 883, § 2; A.S.A. 1947, § 82-3902.

8-6-404. Disposition of fines collected.

All fines collected under §§ 8-6-406 — 8-6-408 shall be deposited as follows:

(1) If a municipality or county where the offense occurs is a certified affiliate of Keep Arkansas Beautiful or Keep America Beautiful, Inc., and participates in litter-control programs conducted by these organizations, then the moneys from fines collected for offenses in that jurisdiction shall be deposited, according to accounting procedures prescribed by law, into the city general fund or the county general fund to be used for the purpose of community improvement as determined by the municipal or county governing body; or

(2) If the municipality or county where the offense occurs is not a certified affiliate of Keep Arkansas Beautiful or Keep America Beautiful, Inc., or does not participate in litter-control programs conducted by these organizations, then the moneys from fines collected for offenses in those jurisdictions shall be remitted by the tenth day of each month to the Administration of Justice Funds Section of the Office of Administrative Services of the Department of Finance and Administration, on a form provided by the Office of Administrative Services of the Department of Finance and Administration, for deposit into the Keep Arkansas Beautiful Fund Account to be used by the Keep Arkansas Beautiful Commission, as appropriated by the General Assembly, for the purposes of encouraging litter prevention and anti-litter education and increasing awareness of litter law enforcement statewide.

History. Acts 1977, No. 883, §§ 7, 11; 1981, No. 841, §§ 1, 2; A.S.A. 1947, §§ 82-3907, 82-3911; Acts 1993, No. 727, § 1; 1995, No. 979, § 1; 2001, No. 145, § 1; 2003, No. 1765, § 3; 2005, No. 646, § 1; 2015, No. 1264, § 3.

Amendments. The 2015 amendment rewrote the section heading and the section.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Environmental Law, 24 U. Ark. Legislation, 2001 Arkansas General As- Little Rock L. Rev. 475.

8-6-405. Injunction.

In addition to all other remedies provided by this subchapter, the Arkansas Department of Environmental Quality, the Attorney General, the prosecuting attorney of a county where any violation of any provision of this subchapter occurs, or any citizen, resident, or taxpayer of the county where a violation of any provision of this subchapter occurs may apply to the circuit court or the judge in vacation of the county where the alleged violation occurred for an injunction to restrain, prevent, or abate the maintenance and storage of litter, junk motor vehicles, old vehicle tires, or inoperative or discarded household appliances in violation of any provision of this subchapter.

History. Acts 1977, No. 883, § 16; A.S.A. 1947, § 82-3916; Acts 1991, No. 516, § 1; 1999, No. 1164, § 64.

8-6-406. Littering and commercial littering.

(a) It is unlawful to drop, deposit, discard, or otherwise dispose of litter upon any public or private property in this state or upon or into any river, lake, pond, or other stream or body of water within this state, unless:

(1) The property has been designated by the Arkansas Department of Environmental Quality as a permitted disposal site;

(2) The litter is placed into a receptacle intended by the owner or tenant in lawful possession of that property for the deposit of litter, if it is deposited in such a manner as to prevent the litter from being carried away or deposited by the elements upon any part of the private or public property or waters; or

(3)(A) The person is the owner or tenant in lawful possession of the property and the litter remains upon the property and the act does not create a public health or safety hazard, a public nuisance, or a fire hazard.

(B) However, a property owner shall not be held responsible for the actions of his or her tenant.

(b)(1)(A) A person who violates this section upon conviction is guilty of a violation and shall be fined an amount not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000) and is subject to community service under subdivision (b)(2)(A) of this section.

(B) A person who violates this section for a second or subsequent offense within three (3) years of a prior offense upon conviction is guilty of a violation and shall be fined an amount not less than two hundred dollars (\$200) and not more than two thousand dollars

(\$2,000) and is subject to community service under subdivision (b)(2)(A) of this section.

(2)(A) In addition to any sentence provided for under this subsection, the court upon conviction shall impose the following penalty of community service:

(i) For a first offense, not more than eight (8) hours; or

(ii) For a second or subsequent offense, not more than twenty-four (24) hours.

(B) A person may also be required by the court as a part of his or her sentence to remove litter from alongside highways and at other appropriate locations for any prescribed period.

(3) A person convicted of a violation of this section who fails to pay any fines assessed in accordance with the findings and orders of the court shall have his or her driver's license suspended for six (6) months by the Department of Finance and Administration upon receipt by the Department of Finance and Administration of an order of denial of driving privileges from the court under this section.

(c)(1) A person who violates this section and who is found to have committed the violation in furtherance of or as a part of a commercial enterprise, whether or not that commercial enterprise is the disposal of wastes, upon conviction is guilty of commercial littering and is guilty of a Class A misdemeanor.

(2) A person convicted of commercial littering may be required to remove litter disposed of in violation of this subchapter.

(d) All or any portion of the fines, community service, and imprisonment penalties provided by this section may be suspended by the court if the violator agrees to remove litter from alongside highways and at other appropriate locations for a prescribed period.

History. Acts 1977, No. 883, § 4; A.S.A. 1947, § 82-3904; Acts 1999, No. 1164, § 65; 2015, No. 1264, § 4. rewrote the section heading; designated the existing language as (a); substituted "It is unlawful" for "It shall be unlawful"

Amendments. The 2015 amendment in (a); and added (b) through (d).

8-6-407. Refuse hauling by uncovered vehicles.

(a) A person engaged in commercial or for-hire hauling who operates a truck or other vehicle within this state shall not transport litter, trash, or garbage unless the truck or other vehicle is covered to prevent its contents from blowing, dropping, falling off, or otherwise departing from the truck or other vehicle.

(b)(1) A person operating his or her own truck or other vehicle to transport litter, trash, or garbage shall take reasonable steps to prevent its contents from blowing, dropping, falling off, or otherwise departing from the truck or other vehicle.

(2) However, a vehicle hauling predominately metallic material is not required to be covered if it is loaded in a manner that will prevent the material from falling or dropping from the vehicle.

(c)(1)(A) A person who violates this section upon conviction is guilty of a violation and shall be fined an amount not less than one hundred

dollars (\$100) and not more than one thousand dollars (\$1,000) and is subject to community service under subdivision (c)(2)(A) of this section.

(B) A person who violates this section for a second or subsequent offense within three (3) years of a prior offense upon conviction is guilty of a violation and shall be fined an amount not less than two hundred dollars (\$200) and not more than two thousand dollars (\$2,000) and is subject to community service under subdivision (c)(2)(A) of this section.

(2)(A) In addition to any sentence provided for under this subsection, the court upon conviction shall impose the following penalty of community service:

(i) For a first offense, not more than eight (8) hours; or

(ii) For a second or subsequent offense, not more than twenty-four (24) hours.

(B) A person may also be required by the court as a part of his or her sentence to remove litter from alongside highways and other appropriate locations for any prescribed period.

(3) A person convicted of a violation of this section who fails to pay any fines assessed in accordance with the findings and orders of the court shall have his or her driver's license suspended for six (6) months by the Department of Finance and Administration upon receipt by the department of an order of denial of driving privileges from the court under this section.

(d)(1) A person who violates this section and who is found to have committed the violation in furtherance of or as a part of a commercial enterprise, whether or not that commercial enterprise is the disposal of wastes, upon conviction is guilty of a Class A misdemeanor.

(2) A person convicted of commercial littering may be required to remove litter disposed of in violation of this subchapter.

(e) All or any portion of the fines, community service, and imprisonment penalties provided by this section may be suspended by the court if the violator agrees to remove litter from alongside highways and at other appropriate locations for a prescribed period.

History. Acts 1977, No. 883, § 6; A.S.A. 1947, § 82-3906; Acts 2015, No. 1264, § 5.

Amendments. The 2015 amendment deleted "Commercial" at the beginning of

the section heading; designated the existing language as (a) and (b); and added (c) through (e).

8-6-408. Discarding certain items prohibited.

(a) It is unlawful for a person to place or cause to be placed any junk motor vehicle, old vehicle tire, or inoperative or abandoned household appliance, or part of a junk motor vehicle, old vehicle tire, or inoperative or abandoned household appliance upon the right-of-way of any public highway, upon any other public property, or upon any private property that he or she does not own, lease, rent, or otherwise control, unless it

is at a salvage yard, a permitted disposal site, or at the business establishment of a demolisher.

(b) A person who violates this section upon conviction is guilty of:

(1) A violation for a first offense and shall be fined one thousand dollars (\$1,000) and sentenced to one hundred (100) hours of community service; and

(2) A Class A misdemeanor for a second or subsequent offense.

History. Acts 1977, No. 883, § 10; A.S.A. 1947, § 82-3910; Acts 2015, No. 1264, § 6.

Amendments. The 2015 amendment designated the existing language as (a); and added (b).

8-6-409. Prima facie evidence against drivers.

If the throwing, dumping, or depositing of litter was done from a vehicle, except a motor bus, it shall be prima facie evidence that the throwing, dumping, or depositing was done by the driver of the vehicle.

History. Acts 1977, No. 883, § 5; A.S.A. 1947, § 82-3905.

8-6-410. Notice to the public required.

The state shall erect signs containing pertinent portions of this subchapter along the public highways of this state and in all campgrounds and trailer parks, forestlands, and recreational areas, at all public beaches, and at other public places where persons are to be informed of the existence and content of this subchapter and the penalties for violating this subchapter's provisions.

History. Acts 1977, No. 883, § 8; A.S.A. 1947, § 82-3908.

8-6-411. Litter receptacles.

The state shall place litter receptacles along public highways in appropriate numbers to provide motorists with convenient methods of litter disposal.

History. Acts 1977, No. 883, § 9; A.S.A. 1947, § 82-3909.

8-6-412. Enforcement generally.

(a) All Arkansas-certified law enforcement officers:

(1) Shall enforce this subchapter;

(2) May issue citations to or arrest persons violating any provision of this subchapter; and

(3)(A) May serve and execute all warrants, citations, and other process issued by the courts in enforcing this subchapter.

(B) In addition, mailing by registered mail of the process to the person's last known place of residence shall be deemed as personal service upon the person charged.

(b)(1) Illegal dumps control officers licensed and certified in accordance with § 8-6-905 and code enforcement officers as defined by municipal ordinance may:

(A) Enforce this subchapter; and

(B) Issue citations to persons violating this subchapter.

(2) However, illegal dumps control officers licensed and certified in accordance with § 8-6-905 and code enforcement officers as defined by municipal ordinance shall not:

(A) Have the powers of arrest;

(B) Carry firearms; or

(C) Take any other official law enforcement actions.

(c)(1) All certified law enforcement officers may serve and execute all warrants, citations, and other process issued by the courts in enforcing this subchapter.

(2) In addition, mailing by registered mail of the process to the person's last known place of residence shall be deemed as personal service upon the person charged.

History. Acts 1977, No. 883, § 3; A.S.A. 1947, § 82-3903; Acts 1999, No. 386, § 1; 2005, No. 75, § 1; 2007, No. 377, § 1.

8-6-413. Authority to take possession of discarded items — Notice.

(a)(1) Any enforcement agency described in § 8-6-412 which has knowledge of, discovers, or finds any junk motor vehicle, old vehicle tire, or inoperative or discarded household appliance on either public or private property may take it into custody and possession.

(2) The enforcement agency may employ its own personnel, equipment, and facilities or hire persons, equipment, and facilities for the purpose of removing, preserving, and storing junk motor vehicles, old vehicle tires, or inoperative or abandoned household appliances.

(b)(1) However, before taking any junk motor vehicle into custody and possession from private property, the enforcement agency shall give the private property owner and the owner of the junk motor vehicle, if ascertainable, thirty (30) days' notice by registered or certified mail or seventy-two (72) hours' notice by personal service that such an action will be taken unless the junk motor vehicle is:

(A) Restored to a functional use;

(B) Disposed of by the owner in a manner not prohibited by this subchapter; or

(C) Placed in an enclosed building.

(2) The thirty-days' or seventy-two-hours' notice under subdivision (b)(1) of this section may be waived by the owners of the property.

History. Acts 1977, No. 883, § 12;
A.S.A. 1947, § 82-3912; Acts 2005, No.
1222, § 1.

8-6-414. Notification to motor vehicle owner and lienholders — Reclamation.

(a)(1) The enforcement agency which takes into custody and possession any junk motor vehicle, within thirty (30) days after taking custody and possession thereof, shall notify the last known registered owner of the junk motor vehicle and all lienholders of record that the junk motor vehicle has been taken into custody and possession.

(2) The notification shall be by registered or certified mail, return receipt requested.

(3) The notice shall:

(A) Contain a description of the junk motor vehicle, including the year, make, model, manufacturer's serial or identification number, or any other number which may have been assigned to the junk motor vehicle by the Office of Motor Vehicle and shall note any distinguishing marks;

(B) Set forth the location of the facility where the junk motor vehicle is being held and the location where the junk motor vehicle was taken into custody and possession; and

(C) Inform the owner and any lienholders of record of their right to reclaim the junk motor vehicle within ten (10) days after the date notice was received by the owner or lienholders upon payment of all towing, preservation, and storage charges resulting from taking and placing the junk motor vehicle into custody and possession and state that the failure of the owner or lienholders of record to exercise their right to reclaim the junk motor vehicle within the ten-day period shall be deemed a waiver by the owner and all lienholders of record of all right, title, and interest in the junk motor vehicle and of their consent to the sale or disposal of the junk motor vehicle at a public auction or to a salvage yard or demolisher.

(b)(1) If the identity of the last registered owner of the junk motor vehicle cannot be determined, if the certificate of registration or certificate of title contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, then notice shall be published in a newspaper of county-wide circulation in the county wherein the junk motor vehicle was located at the time the enforcement agency took custody and possession of the junk motor vehicle.

(2) This notice shall be sufficient to meet all requirements of notice pursuant to this section.

(3) Any notice by publication may contain multiple listings of junk motor vehicles.

(4) The notice shall be published within thirty (30) days after the junk motor vehicle is taken into custody and possession.

(5) The notice shall have the same contents required for a notice pursuant to subsection (a) of this section, except that the ten-day period shall run from the date such notice is published as prescribed.

(c) The consequences and effect of failure to reclaim a junk motor vehicle within the ten-day period after notice is received by registered or certified mail or within ten (10) days after the notice is published in a newspaper as prescribed shall be set forth in the notice.

History. Acts 1977, No. 883, § 13;
A.S.A. 1947, § 82-3913.

8-6-415. Sale of junk motor vehicles and discarded items.

(a) If a junk motor vehicle is not reclaimed as provided for in § 8-6-414, the enforcement agency in possession of the junk motor vehicle shall sell it either at a public auction or to a salvage yard or demolisher. The purchaser of the junk motor vehicle shall take title to the junk motor vehicle free and clear of all liens and claims of ownership and shall receive a sales receipt from the enforcement agency which disposed of the junk motor vehicle. The sales receipt at the sale shall be sufficient title only for purposes of transferring the junk motor vehicle to a salvage yard or to a demolisher for demolition, wrecking, or dismantling. No further titling of the junk motor vehicle shall be necessary by either the purchaser at the auction, the salvage yard, or the demolisher, who shall be exempt from the payment of any fees and taxes.

(b) When an enforcement agency has in its custody and possession old vehicle tires or inoperative or discarded household appliances collected in accordance with § 8-6-413, it shall sell property, from time to time, at public auction or to a salvage yard or demolisher.

History. Acts 1977, No. 883, § 14;
A.S.A. 1947, § 82-3914.

8-6-416. Disposition of sale proceeds.

(a) From the proceeds of any sale, the enforcement agency which sold the junk motor vehicle, old vehicle tire, or inoperative or discarded household appliance shall reimburse itself for any expenses it may have incurred in removing, towing, preserving, and storing the property and for the expenses of conducting any auction and any notice and publication expenses incurred pursuant to this subchapter.

(b) Any remainder from the proceeds of the sale shall be deposited into the State Treasury to be kept and maintained in the Litter Control Account. Any remainder from the proceeds of the sale of a junk motor vehicle after payment of the expenses shall be held for the last registered owner of the junk motor vehicle or any lienholder for ninety (90) days, after which time, if no owner or lienholder claims the remainder, it shall be deposited into the account.

(c) Any moneys so collected and deposited into the account shall be used solely for the payment of auction, towing, removing, preserving, storing, notice, and publication costs which result from taking other junk motor vehicles, old vehicle tires, and inoperative or discarded household appliances into custody and possession.

History. Acts 1977, No. 883, § 15;
A.S.A. 1947, § 82-3915.

8-6-417. [Repealed.]

Publisher's Notes. This section, concerning the Advisory Board on the Control of Litter and Junk, was repealed by Acts 1991, No. 786, § 6. The section was derived from Acts 1977, No. 883, § 17; A.S.A. 1947, § 82-3917.

Acts 1989, No. 536, § 8, abolished the Advisory Board on the Control of Litter and Junk.

8-6-418. Possession or use of glass containers on navigable waterways — Definitions.

(a)(1) Except for containers for medicinal substances contained in a first-aid kit or prescribed by a licensed physician, and except as provided under subdivision (a)(2) of this section, no person shall possess or use glass containers within a vessel within the banks of Arkansas's navigable waterways.

(2) A person engaged in removing glass previously discarded by others and found within the banks of an Arkansas navigable waterway may not be charged with a violation of this section on the basis of possession of glass, if while underway and upon a waterway, he or she transports the removed glass securely in a trash container.

(b)(1) A person entering, traveling upon, or otherwise using Arkansas's navigable waterways by canoe, kayak, innertube, or other vessel easily susceptible to swamping, tipping, rolling, or otherwise discharging its contents into a waterway, and transporting foodstuffs or beverages shall:

(A) Transport all foodstuffs and beverages in a sturdy container and ensure that the sturdy container is made to seal or lock in the contents to prevent the contents from spilling into the water;

(B)(i) Carry and affix to the vessel a trash container or bag suitable for containing his or her refuse, waste, and trash materials and capable of being securely closed.

(ii) The trash container or bag shall be either a sturdy container, of a construction similar to a sturdy container, or a bag of mesh construction;

(C)(i) Except as provided under subdivision (b)(1)(C)(ii) of this section, transport all his or her refuse, waste, and trash either in a sturdy container or in a trash container to a place where the refuse, waste, and trash may be safely and lawfully disposed of.

(ii) A person engaged in removing items of refuse, waste, and trash materials previously discarded by others and found by him or her

within the banks of an Arkansas navigable waterway and that are too large to be transported in a trash container or bag, may not be charged with a violation of this section on the basis of possession and transportation of the refuse, waste, and trash; and

(D) At all times other than when a beverage is securely contained in a sturdy container or a trash container as in subdivisions (b)(1)(A)-(C) of this section, keep the beverage attached to or held within a floating holder or other device designed to prevent the beverage from sinking beneath the surface of the waterway.

(2) Neither a sturdy container nor a trash container may be required of a person traveling without foodstuffs or beverages.

(c)(1) A violation of this section shall be a misdemeanor and each violation may be prosecuted as a separate offense.

(2) Each violation shall be punishable by a fine of not more than five hundred dollars (\$500).

(d) As used in this section:

(1) "Navigable waterway" means any navigable river, lake, or other body of water used or susceptible to being used in its natural condition by canoe, kayak, innertube, or other vessel easily susceptible to swamping, tipping, or rolling, and located wholly or partly within this state;

(2) "Sturdy container" does not include a container that is:

(A) Primarily constructed of styrofoam; or

(B) So constructed that it may be easily broken; and

(3) "Vessel" does not include a houseboat, party barge, johnboat, runabout, ski boat, bass boat, or similar craft not easily susceptible to swamping, tipping, or rolling.

History. Acts 2001, No. 803, § 1; 2003, No. 1101, § 1.

SUBCHAPTER 5 — ILLEGAL DUMP ERADICATION AND CORRECTIVE ACTION PROGRAM ACT

SECTION.

8-6-501. Title.

8-6-502. Purpose.

8-6-503. Definitions.

8-6-504. Illegal Dump Eradication and Corrective Action Program.

8-6-505. Proceedings generally.

8-6-506. Criminal, civil, and administrative penalties.

SECTION.

8-6-507. Consequences of unpaid fines and costs.

8-6-508. Enforcement generally.

8-6-509. Agricultural operations.

8-6-510. Effectiveness of regulations and orders.

Effective Dates. Acts 1997, No. 938, § 9: July 1, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the fiscal year begins on July 1,

and that this emergency clause is necessary in order that uniformity can be achieved at the beginning of the 1997-1998 fiscal year for money deposited into the Landfill Post-Closure Trust Fund and

the moneys allocated from that fund for the Illegal Dump Eradication and Corrective Action Program. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1997.”

Acts 2005, No. 75, § 4: Feb. 7, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that current resources are limited to enforce the Litter Control Act; that this act authorizes illegal dumps control officers to issue citations for violations of the Litter Control Act; that this act clarifies the proper dis-

posal of solid waste from illegal dumps; and that this act is immediately necessary to provide additional resources for the control of litter and the proper disposal of solid waste. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

8-6-501. Title.

This subchapter shall be known and may be cited as the “Illegal Dump Eradication and Corrective Action Program Act”.

History. Acts 1995, No. 502, § 1; 1997, No. 938, § 1. renumbered former § 8-6-501 as § 8-6-503.

Publisher’s Notes. Acts 1995, No. 502,

8-6-502. Purpose.

It is the purpose of this subchapter to set forth the policy of the state to eliminate the illegal dumping of solid waste and to provide a means of funding the Illegal Dump Eradication and Corrective Action Program. This subchapter defines illegal dumps and establishes elimination proceedings and provides a mechanism for funding.

History. Acts 1995, No. 502, § 1; 1997, No. 938, § 1. and Acts 1997, No. 938, renumbered former § 8-6-502 as § 8-6-504 and § 8-6-505, respectively.

Publisher’s Notes. Acts 1995, No. 502,

8-6-503. Definitions.

- As used in this subchapter:
- (1) “Commission” means the Arkansas Pollution Control and Ecology Commission;
 - (2) “Department” means the Arkansas Department of Environmental Quality;
 - (3) “Director” means the Director of the Arkansas Department of Environmental Quality;
 - (4) “Illegal dump” means any place at which solid waste is placed, deposited, abandoned, dumped, or otherwise disposed of in a manner that is prohibited by this subchapter or other statutes, rules, or regulations, and which constitutes one (1) of the following:
 - (A) An attractive nuisance;

(B) A fire, health, or safety hazard;

(C) A potential source of surface or groundwater contamination; or

(D) Other contamination that is hazardous to the public health or endangers the environment;

(5) “Illegal dumping of solid waste” means the illegal placing, depositing, dumping, or causing to be placed, deposited, or dumped by any person any solid waste that is prohibited by this chapter:

(A) In or upon any public or private highway or road, including any portion of the right-of-way thereof;

(B) In or upon any private property into or upon which the public is admitted by easement or license or any private property;

(C) In or upon any public park or other public property, other than the property designated or set aside for such purpose by the governing board or body having charge thereof; or

(D) Upon any property for which a permit has not been issued by the department;

(6) “Illegal dumps control officer” means an individual employed by a duly authorized regional solid waste management district within this state, a county government within this state, or a pollution control inspector or other authorized representative of the department who is empowered to ensure compliance with the provisions of this subchapter;

(7) “Landfill” means a landfill permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq., except a landfill where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry or wastes of a similar kind or character;

(8) “Person” means any individual, corporation, company, firm, partnership, association, trust, state agency, government instrumentality or agency, institution, county, city, town, municipal authority, or trust, venture, or other legal entity, however organized; and

(9) “Solid waste” means any garbage or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities, but does not include solid or dissolved materials in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. § 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954.

History. Acts 1977, No. 380, § 1; A.S.A. 1947, § 82-2729; Acts 1995, No. 502, § 1; 1997, No. 938, § 1; 1997, No. 1207, § 1; 1999, No. 1164, §§ 66, 67; 2009, No. 1199, § 7.

A.C.R.C. Notes. Acts 1997, No. 1207, § 1, purported to add the definition for

“illegal dumps control officer” to § 8-6-502. Pursuant to § 1-2-303, the Arkansas Code Revision Commission codified the definition in this section.

Publisher’s Notes. Prior to 1995, this section was codified as § 8-6-501.

U.S. Code. The Atomic Energy Act of

1954, referred to in this section, is codified primarily as 42 U.S.C. § 2011 et seq.

8-6-504. Illegal Dump Eradication and Corrective Action Program.

The Illegal Dump Eradication and Corrective Action Program shall be administered by the Arkansas Department of Environmental Quality.

History. Acts 1997, No. 938, § 1; 2005, renumbered former § 8-6-504 as § 8-6-505. No. 1962, § 17.

Publisher's Notes. Acts 1997, No. 938,

8-6-505. Proceedings generally.

(a) Any government official or employee or any person who has knowledge of or information on the illegal dumping of solid waste on any public or private property in this state may file a complaint in a court of competent jurisdiction of the county in which the illegal dumping of solid waste has taken place or in the county of residence of the person who is accused of being liable for the illegal dumping of solid waste.

(b)(1) Upon the filing of a verified complaint, noting on the complaint the person against whom the claim is filed, the court shall enter a temporary order directing that the accused person remove from the described public or private property the solid waste that has been illegally dumped on the property and properly dispose of the solid waste in a permitted landfill or other facility within ten (10) days from the date of the order.

(2) The county sheriff shall serve the order.

(3) Upon the order's being served, the accused party shall:

(A) Remove the solid waste in question from the public or private property as described in the order;

(B) Dispose of the solid waste at a properly permitted solid waste transfer station, landfill, recycling center, or incinerator; and

(C) Return to the court a disposal receipt from the facility where the solid waste was disposed.

(4) If the person wishes to challenge the order, the person may file a petition challenging the order with the court within ten (10) days from the date the order is served.

(c)(1) Upon the filing of a petition challenging the order, the court shall hold a hearing on it within fourteen (14) days after the filing of the petition and shall serve notice upon the accusing party and upon the accused.

(2) At the hearing, which may be continued from time to time as determined by the court, the court shall hear all evidence and testimony and after hearing it shall enter an order either dismissing the original or temporary order or making the order permanent.

(3) The parties represented at the hearing may be represented by counsel.

(d)(1) If the order is made permanent, within ten (10) days thereafter the accused party shall cause the solid waste which has been illegally dumped on private or public property to be removed from the property and disposed of properly in a permitted landfill or other facility.

(2)(A) If after ten (10) days from the date of the order the person against whom the order is directed has not removed the solid waste from the public or private property and properly disposed of it as noted in the order, the governmental agency or the owner of the property may cause it to be moved and shall file with a court a verified statement in writing of the cost of removal.

(B) After reviewing the statement, if the court determines it to be reasonable, the court shall enter an order upon the judgment docket of the court of the amount of the statement, which shall be a judgment against the party against whom the judgment was issued and may be enforced as any other judgment.

(e)(1) Any party aggrieved by any order of a court under this subchapter may appeal from the order.

(2) If an aggrieved party appeals to a circuit court of competent jurisdiction, then the circuit court shall try the cause de novo.

History. Acts 1977, No. 380, § 2; A.S.A. 1947, § 82-2730; Acts 1995, No. 502, § 1;

Publisher's Notes. Acts 1997, No. 938, renumbered former § 8-6-505 as § 8-6-506.

8-6-506. Criminal, civil, and administrative penalties.

In addition to the proceedings described in § 8-6-505, every person convicted of a violation of this subchapter shall be subject to the criminal, civil, or administrative penalties as specified in § 8-6-204.

History. Acts 1995, No. 502, § 1; 1997, No. 938, § 1.

renumbered former § 8-6-506 as § 8-6-507.

Publisher's Notes. Acts 1997, No. 938,

8-6-507. Consequences of unpaid fines and costs.

(a) In all convictions for violations of the provisions of this subchapter when the fine and costs are not paid, the person convicted shall be subject to administrative or civil enforcement action.

(b) Sanctions may include administrative, civil, or criminal penalties as provided in the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

History. Acts 1995, No. 502, § 1; 1997, No. 938, § 1.

8-6-508. Enforcement generally.

(a)(1) Illegal dumps control officers are empowered to ensure compliance with the provisions of this subchapter by having the right and duty to:

(A) Inspect suspected illegal dumps;

(B) Collect evidence of open dumping and littering and present the evidence to the prosecuting attorney or a court of competent jurisdiction where the offense was committed; and

(C) Issue and serve citations for violations of provisions of the Arkansas Solid Waste Management Act, § 8-6-201 et seq., prohibiting illegal dumping, subject to exemptions under § 8-6-205 and the agricultural exemptions under § 8-6-509, and for violations of the Litter Control Act, § 8-6-401 et seq., prohibiting unlawful littering.

(2) Citations issued by illegal dumps control officers shall be filed in any court having jurisdiction in the county where the offense is committed.

(3)(A) Citations may be served in person or by mailing a copy of the citation by certified mail, restricted delivery, to either the address obtained from evidence collected from the illegal dump or to the person's last known address. Persons receiving citations shall appear before the court named within the citation at the time designation in the citation.

(B) Courts having jurisdiction over citations issued by illegal dumps control officers may issue penalties as specified in § 8-6-204(a).

(4) Illegal dumps control officers may require violators to present signed and dated disposal receipts as evidence that the solid waste has been:

(A) Removed from the illegal dump; and

(B) Properly disposed of in one (1) or more of the following facilities:

(i) A permitted landfill;

(ii) A solid waste transfer station;

(iii) A recycling center;

(iv) An incinerator;

(v) A scrap yard that purchases iron, steel, aluminum, or other metals;

(vi) A permitted waste tire collection center or waste tire processing facility; or

(vii) Any other facility that the illegal dumps control officer finds to be a proper disposal of the solid waste.

(b) All illegal dumps control officers shall be licensed and certified in accordance with § 8-6-901 et seq.

(c) Illegal dumps control officers shall not have powers of arrest.

History. Acts 1997, No. 1207, § 2;
2001, No. 1686, § 1; 2005, No. 75, § 3.

8-6-509. Agricultural operations.

The Arkansas Solid Waste Management Act, § 8-6-201 et seq., this subchapter, and § 8-6-901 et seq. do not apply to:

(1) Any place at which agricultural gleanings and crop residue resulting from operations of farms, grain elevators, cotton gins, and similar industries are being land applied according to current management practices of such industries or the agricultural community and with the consent of the landowner is not an illegal dump; and

(2) Any landowner who disposes of solid waste on the property on which waste results from such agricultural or farming operations or household operations and such disposal does not constitute a fire, health, or safety hazard to the public.

History. Acts 1997, No. 1207, § 5.

8-6-510. Effectiveness of regulations and orders.

None of the provisions of this act are intended to supersede any of the reuse, recycling, or fill provisions of state law of Regulation 22 of the Solid Waste Management Division of the Arkansas Department of Environmental Quality.

History. Acts 1997, No. 1207, § 6; 1207, codified as §§ 8-6-503, 8-6-508 — 1999, No. 1164, § 68. 8-6-510, 8-6-901, and 8-6-905.

Meaning of “this act”. Acts 1997, No.

SUBCHAPTER 6 — SOLID WASTE MANAGEMENT AND RECYCLING FUND ACT

SECTION.

8-6-601. Title.

8-6-602. Legislative findings and intent
— Duties of department —
Construction.

8-6-603. Definitions.

8-6-604. Recycling plans and implemen-
tation.

8-6-605. Solid Waste Management and
Recycling Fund.

8-6-606. Landfill disposal fees.

8-6-607. Collection of fees.

8-6-608. Penalties.

SECTION.

8-6-609. [Repealed.]

8-6-610. Rules and regulations.

8-6-611. Computation of fees.

8-6-612. [Repealed.]

8-6-613. Computer and electronic equip-
ment recycling program.

8-6-614. [Repealed.]

8-6-615. Distribution of funds to regional
solid waste management
districts — Reporting re-
quirements.

8-6-616. [Repealed.]

Effective Dates. Acts 1993, No. 1127, § 7: Apr. 13, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that some areas of the state are facing critical shortages of solid waste disposal capacity due to the difficulties in siting landfill facilities at the local level. It is found that the authority granted to municipalities and counties to adopt more restrictive standards for the location, design, construction, and maintenance of solid waste disposal sites and

facilities than those adopted by the federal, state and regional laws, rules, regulations, and orders, has exacerbated and attenuated this crises and could thwart or jeopardize the purposes of Arkansas Act 752 of 1991 and its efforts to protect the public health and the state’s environmental quality by establishing regional solid waste management and planning. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public

peace, health, and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2012, No. 283, § 15: July 1, 2012. Emergency clause provided: “It is found and determined by the General Assembly,

that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2012 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2012 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2012.”

Acts 2013, No. 1202, § 49: July 1, 2013. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2013 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2013 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2013.”

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Note, Environmental Law — Conservation — New Jersey Mandatory Statewide Source

Separation and Recycling of Solid Waste Act, 11 U. Ark. Little Rock L.J. 733.

8-6-601. Title.

This subchapter may be known and cited as the “Solid Waste Management and Recycling Fund Act”.

History. Acts 1989, No. 849, § 1; 1989, No. 934, § 1.

8-6-602. Legislative findings and intent — Duties of department — Construction.

(a) The General Assembly finds that the solid waste needs of the state are not being met in an efficient, cost-efficient, and environmentally sound manner. The current reliance upon localized landfills is threatening to add Arkansas to those states experiencing solid waste management crises.

(b) The General Assembly concludes that, to the extent practicable, regional solid waste management systems should be developed which address solid waste needs in the context of cooperation and shared resources.

(c)(1) The General Assembly finds that recycling glass, plastic, cans, paper, and other materials will reduce the state's reliance upon landfills.

(2) Additionally, other solid waste reduction activities will help reduce the state's dependence on landfills, including:

(A) Using waste items as raw materials in a production process, such as adding shingles to asphalt mix for paving;

(B) Using waste items to produce an end product without recycling, such as returning wood chips to citizens as mulch;

(C) Using waste items as fuel, such as burning wood chips or tire chips in a waste-to-fuel process; or

(D) Other activities as approved by the Arkansas Department of Environmental Quality.

(3) The waste stream reduction activities described in subdivision (c)(2) of this section also curb littering, illegal dumping, and abate the environmental risks caused by current solid waste practices.

(4) The General Assembly therefore mandates that recycling shall be integrated as a component of any solid waste management plan required under the Arkansas Solid Waste Management Act, § 8-6-201 et seq., and that these recycling plans shall be implemented under the terms of this subchapter.

(d) The department and the Arkansas Pollution Control and Ecology Commission shall promulgate and implement policies, rules, regulations, and procedures for administering the terms of this subchapter.

(e) The terms and obligations of this subchapter shall be liberally construed so as to achieve remedial intent.

History. Acts 1989, No. 849, § 2; 1989, No. 934, § 2; 2011, No. 819, § 1; 2013, No. 1333, § 1. **Amendments.** The 2013 amendment rewrote (d).

8-6-603. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(2) "Department" means the Arkansas Department of Environmental Quality;

(3) "Landfill" means all landfills permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq., except those permitted landfills operated by a regulated public utility for ash generated by the combustion of coal to produce electric energy;

(4) "Permittee" means any individual, corporation, company, firm, partnership, association, trust, local solid waste authority, institution, county, city, town, or municipal authority or trust, venture, or other legal entity holding a solid waste disposal permit as provided in the Arkansas Solid Waste Management Act, § 8-6-201 et seq.;

(5) "Recycling" means the systematic collection, sorting, decontamination, and return of waste materials to commerce as commodities for use or exchange;

(6) "Solid waste" means any garbage or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. § 1342, or source material, special nuclear material, or by-product material as defined by the Atomic Energy Act of 1954, Pub. L. No. 83-703;

(7) "Solid waste disposal permit" means a permit issued by the State of Arkansas under the provisions of the Arkansas Solid Waste Management Act, § 8-6-201 et seq., for the construction and operation of a landfill waste disposal facility;

(8) "Solid waste management" means the management of, but is not limited to, the storage, collection, transfer, transportation, treatment, utilization, processing, and final disposal of solid waste, including, but not limited to, the prevention, reduction, or recycling of wastes;

(9) "Solid waste management plan" means a plan which is developed according to the provisions of the Arkansas Solid Waste Management Act, § 8-6-201 et seq., and guidelines of the department, and which is subject to approval by the department;

(10) "Solid waste reduction activities" means other activities that divert materials from landfills for reuse, including without limitation:

(A) Using waste items as raw materials in a production process, such as adding shingles to asphalt mix for paving;

(B) Using waste items to produce an end product without recycling, such as returning wood chips to citizens as mulch;

(C) Using waste items as fuel, such as burning wood chips or tire chips in a waste-to-fuel process; or

(D) Other activities as approved by the department; and

(11) "Transporter" or "solid waste transporter" means any individual, corporation, company, firm, partnership, association, trust, local solid waste authority, institution, county, city, town, or municipal authority or trust, venture, or other legal entity transporting solid waste within the state that is to be disposed of outside the state.

History. Acts 1989, No. 849, § 3; 1989, No. 934, § 3; 1991, No. 755, § 1; 1993, No. 1127, § 3; 1995, No. 511, § 1; 1999, No. 1164, § 69; 2011, No. 819, § 2.

U.S. Code. The Atomic Energy Act of 1954, referred to in (6), is codified primarily as 42 U.S.C. § 2011 et seq.

8-6-604. Recycling plans and implementation.

(a) Unless otherwise excused by the Arkansas Pollution Control and Ecology Commission pursuant to the Arkansas Solid Waste Management Act, § 8-6-201 et seq., each governmental entity which is required to submit or has submitted a solid waste management plan pursuant to § 8-6-211 shall produce, by July 1, 1991, a solid waste management plan which proposes the establishment of recycling programs and facilities. The plan shall be subject to review and approval by the Arkansas Department of Environmental Quality.

(b) Pursuant to established procedures, the department may initiate enforcement actions against governmental entities for failure to abide by the requirements of subsection (a) of this section. Enforcement sanctions may include, but are not limited to, denial, discontinuation, or reimbursement of grant funds awarded pursuant to any programs administered by the department.

History. Acts 1989, No. 849, § 4; 1989, No. 934, § 4.

8-6-605. Solid Waste Management and Recycling Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the “Solid Waste Management and Recycling Fund”.

(b) The fund shall be administered by the Arkansas Department of Environmental Quality, which shall authorize distributions and administrative expenditures from the fund under this subchapter for solid waste management and recycling programs.

(c) In addition to all moneys appropriated by the General Assembly to the fund, there shall be deposited into the fund all landfill disposal fees collected pursuant to §§ 8-6-606 and 8-6-607, United States Government moneys designated to enter the fund, any moneys received by the state as a gift or donation to the fund, and all interest earned upon money deposited into the fund.

(d) No more than twenty percent (20%) of the moneys received annually into the fund shall be used by the department for:

(1) The administration of a solid waste management and recycling program;

(2) The administration of a computer and electronic equipment recycling program under § 8-6-613; and

(3) Solid waste management compliance and enforcement activities at landfills and open dumps.

History. Acts 1989, No. 849, § 5; 1989, No. 934, § 5; 2007, No. 512, § 1; 2013, No. 1333, § 2; 2017, No. 624, § 1.

A.C.R.C. Notes. Acts 2017, No. 624, § 9, provided: "Distribution of funds from landfill disposal fees.

"(a)(1) The Chief Fiscal Officer of the State shall determine the total moneys available on the day before the effective date of this act [August 1, 2017] at 11:59 p.m. that were collected under § 8-6-612 [repealed] for computer and electronic equipment recycling programs.

"(2) The moneys available under subdivision (a)(1) of this section shall be used to fund computer and electronic equipment recycling programs under Arkansas Code § 8-6-613(c) until all moneys are distributed as provided under this subsection.

"(3)(A) The use of any interest earnings or investment earnings on the moneys available under subdivision (a)(1) of this section shall not be restricted to computer and electronic equipment recycling programs after the effective date of this act [August 1, 2017].

"(B) The interest earnings and investment earnings on the moneys available under this subsection shall be used as provided under § 8-6-605.

"(4)(A) For each fiscal year, two million five hundred thousand dollars (\$2,500,000) of the moneys available under subdivision (a)(1) of this section shall be added to the distribution of funding to regional solid waste management districts under Arkansas Code § 8-6-615.

"(B) When the balance of the moneys allocated under subdivision (a)(1) of this section is less than two million five hundred thousand dollars (\$2,500,000) for a fiscal year, all of the available moneys remaining in the fund shall be the last moneys used to supplement the distribution to the regional solid waste management districts under § 8-6-615 for that fiscal year.

"(5) For each fiscal year, the Arkansas Department of Environmental Quality shall determine the amount of the moneys

allocated under subdivision (a)(4) of this section that are included in each regional solid waste management district's fund distribution under § 8-6-615 and provide that information to the regional solid waste management districts.

"(6)(A) Except as otherwise provided under subdivision (a)(6)(B) of this section, each regional solid waste management district shall use the moneys received under subdivision (a)(5) of this section for computer and electronic equipment recycling programs.

"(B) Moneys received under this section by a regional solid waste management district but not needed for computer and electronic equipment recycling may be used for another recycling project operated by the regional solid waste management district only if the regional solid waste management board that governs a regional solid waste management district certifies that the funds are not needed for the approved computer and electronic equipment recycling program.

"(b) This section expires after the final distribution of the moneys allocated under subdivision (a)(4)(B) of this section to the regional solid waste management districts."

Amendments. The 2013 amendment, in (a)(2), substituted "distributions" for "grants" and "under" for "according to the provisions of"; and substituted "twenty percent (20%)" for "twenty five percent (25%)" in (a)(4).

The 2017 amendment redesignated former (a)(1) through (a)(4) as present (a) through (d); in (a), substituted "There is" for "The Solid Waste Management and Recycling Fund is" and added "a trust fund to be known as the 'Solid Waste Management and Recycling Fund'"; added "for solid waste management and recycling programs" in (b); deleted "all moneys reimbursed to the department pursuant to § 8-6-610" preceding "federal" in (c); inserted (d)(2); deleted former (b); and made stylistic changes.

Cross References. Solid Waste Management and Recycling Fund, § 19-5-961.

8-6-606. Landfill disposal fees.

(a)(1) Except as provided in subsection (c) or subsection (e) of this section, there is imposed on each landfill permittee a landfill disposal fee of twenty-five cents (25¢) for each uncompacted cubic yard of solid

waste and forty-five cents (45¢) for each compacted cubic yard of solid waste received at the landfill.

(2) If a landfill permittee is required or chooses to operate on a weight basis, the landfill disposal fee shall be one dollar and fifty cents (\$1.50) for each one (1) ton (2,000 lbs.) of solid waste received at the landfill.

(b)(1) Except as provided in subsections (a) and (c) of this section, for all solid waste generated and transported within the state but to be disposed of outside the state, there is imposed on each such solid waste transporter a solid waste transportation fee of twenty-five cents (25¢) for each uncompacted cubic yard of solid waste and forty-five cents (45¢) for each compacted cubic yard of solid waste transported.

(2) If a solid waste transporter chooses to operate on a weight basis, the solid waste transportation fee shall be one dollar and fifty cents (\$1.50) for each ton of solid waste transported in the state.

(c)(1) For those permitted landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry, there is imposed on each landfill permittee a landfill disposal fee of ten cents (10¢) for each uncompacted cubic yard of solid waste and twenty cents (20¢) for each compacted cubic yard of solid waste received at the landfill.

(2) If the landfill permittee chooses to operate on a weight basis, the landfill disposal fee under this subsection shall be fifty cents (50¢) for each ton of solid waste received at the landfill.

(d)(1)(A) By January 1, 2004, all permitted facilities identified by regulation of the Arkansas Pollution Control and Ecology Commission as Class 1 and Class 3C landfills, except those permitted landfills that shall comply with closure requirements before January 1, 2005, shall install scales and commence weighing all solid waste received at the landfill.

(B) This requirement may be satisfied by utilizing an alternative weighing system approved by the Director of the Arkansas Department of Environmental Quality.

(2) Class 1 and Class 3C landfills shall be required to weigh all loads in excess of one (1) ton (2,000 lbs.), unless otherwise authorized in writing by the Arkansas Department of Environmental Quality. This provision authorizes Class 1 and Class 3C landfills to estimate weights for residential and other similar loads weighing less than one (1) ton (2,000 lbs.).

(3) Class 1 and Class 3C landfills shall install and operate scales for the purpose of weighing solid waste received at the landfill and shall maintain and operate the scales in accordance with the United States Department of Agriculture standards.

(4) Except as provided in subdivisions (d)(1) and (2) of this section, beginning January 1, 2004:

(A) All quarterly reports required by this subchapter to be submitted by Class 1 and Class 3C landfill permittees to the Arkansas Department of Environmental Quality shall accurately state the total

weight of solid waste received at the landfill, and the total weight of solid waste received at the landfill shall be based upon the recorded weight scale measurements; and

(B) The recorded weight scale measurements of solid waste received at Class 1 and Class 3C landfills shall be used to calculate the solid waste disposal fees payable to the Arkansas Department of Environmental Quality by Class 1 and Class 3C landfill permittees.

(e) Solid waste collected during the annual Keep Arkansas Beautiful and Keep America Beautiful campaigns that are sponsored by the Keep Arkansas Beautiful Commission is exempt from the landfill disposal fee under this section.

History. Acts 1989, No. 849, § 6; 1989, 1127, § 3; 2001, No. 217, §§ 1, 2; 2003, No. 934, § 6; 1991, No. 754, § 1; 1993, No. No. 1337, § 1; 2009, No. 189, §§ 1, 2.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Environmental Law, 24 U. Ark. Little Rock L. Rev. 475.
Survey of Legislation, 2003 Arkansas General Assembly, Environmental Law, 26 U. Ark. Little Rock L. Rev. 405.

8-6-607. Collection of fees.

Fees imposed under the separate provisions of this subchapter shall be collected as follows:

(1) Each landfill permittee and each solid waste transporter shall submit to the Arkansas Department of Environmental Quality on or before January 15, April 15, July 15, and October 15 of each year a quarterly report that accurately states the total weight or volume of solid waste received at the landfill or transported out of state during the quarter just completed;

(2) On or before January 15, April 15, July 15, and October 15 of each year, each landfill permittee and solid waste transporter shall pay to the department the full amount of disposal fees due for the quarter just completed;

(3) Except as provided in subdivisions (4) and (5) of this section, the disposal and transportation fees collected under this section shall be special revenues and shall be deposited into the State Treasury to the credit of the Solid Waste Management and Recycling Fund for administrative support of the Compliance Advisory Panel;

(4)(A) Twenty-five percent (25%) of the disposal fees collected from landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry shall be deposited into a special revenue fund to be created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State and to be known as the “Marketing Recyclables Program Fund”.

(B) The Marketing Recyclables Program Fund shall be administered by the department and used by the panel for the administration and performance of the panel's duties; and

(5) Beginning July 1, 2013, excluding the disposal fees that are to be deposited into the Marketing Recyclables Program Fund under subdivision (4) of this section, the first one hundred fifty thousand dollars (\$150,000) of the fees collected each fiscal year under this section shall be deposited into the State Treasury and credited to the Crime Information System Fund to be used exclusively for the scrap metal logbook program.

History. Acts 1989, No. 849, § 7; 1989, No. 934, § 7; 1991, No. 755, § 2; 1993, No. 1127, § 3; 1995, No. 511, § 2; 2012, No. 283, § 10; 2013, No. 1202, § 45; 2017, No. 1067, § 2.

Amendments. The 2013 amendment rewrote (5).

The 2017 amendment substituted "Compliance Advisory Panel" for "State Marketing Board for Recyclables" at the

end of (3); substituted "Marketing Recyclables Program Fund" for "Marketing Board Fund" throughout (4) and (5); and, in (4)(B), substituted "panel" for "board" and "panel's" for "board's".

Cross References. Crime Information System Fund, § 19-5-1011.

Marketing Recyclables Program Fund, § 19-6-471.

8-6-608. Penalties.

Failure of the permittee or solid waste transporter to pay the fees assessed by the Arkansas Department of Environmental Quality provides grounds for administrative or civil enforcement action. Sanctions may include civil penalties as provided in the Arkansas Solid Waste Management Act, § 8-6-201 et seq., or the revocation of the solid waste disposal or solid waste transporter permit.

History. Acts 1989, No. 849, § 8; 1989, No. 934, § 8; 1993, No. 1127, § 3.

8-6-609. [Repealed.]

Publisher's Notes. This section, concerning a grant program for the development of solid waste management plans, was repealed by Acts 2013, No. 1333, § 3. The former section was derived from Acts 1989, No. 849, § 9; 1989, No. 934, § 9;

1991, No. 749, § 5; 1992 (1st Ex. Sess.), No. 8, § 2; 1993, No. 1030, § 1; 1995, No. 463, § 1; 1999, No. 428, § 1; 2001, No. 70, § 1; 2003, No. 1027, § 1; 2005, No. 1325, § 1; 2011, No. 819, §§ 3, 4.

8-6-610. Rules and regulations.

(a) The Arkansas Pollution Control and Ecology Commission may adopt reasonable rules and regulations necessary to implement this subchapter, including without limitation:

(1) Collecting fees; and

(2) Setting priorities for the administration of this subchapter.

(b) The rules and regulations shall be reviewed by the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate sub-

committees of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor.

History. Acts 1989, No. 849, § 10; 1989, No. 934, § 10; 1991, No. 749, § 6; 1997, No. 179, § 4; 2001, No. 70, § 2; 2011, No. 819, § 5; 2013, No. 1333, § 4.

Amendments. The 2013 amendment deleted “Conditions imposed upon grant

recipients” in the section heading; deleted (a)(2) and (a)(4) and redesignated the remaining subdivisions accordingly; deleted (b)(1)(B), (b)(2) and (c); and inserted “and regulations” in (b).

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

8-6-611. Computation of fees.

For the purpose of determining landfill disposal or transportation fees under this subchapter, the landfill permittees and solid waste transporters shall use the dry weight basis in determining the fee for disposal or transportation of ash.

History. Acts 1991, No. 751, § 5; 1993, No. 1127, § 3.

8-6-612. [Repealed.]

Publisher’s Notes. This section, concerning landfill disposal fees to support a computer and electronic equipment recycling program, was repealed by Acts 2017,

No. 624, § 2. The section was derived from Acts 2007, No. 512, § 2; 2009, No. 189, §§ 3, 4; 2011, No. 602, § 1.

8-6-613. Computer and electronic equipment recycling program.

(a) A program for the recycling of computer and electronic equipment is created.

(b) The General Assembly finds that:

(1) Computer and electronic equipment solid waste are among the fastest growing and most toxic segments of Arkansas’s solid waste stream; and

(2) There are recycling options to address this problem, and Arkansas solid waste districts and local governments and their delegated authorities and agents should develop solid waste management plans, programs, and facilities that integrate computer and electronic equipment recycling as a functional part of the solid waste management system.

(c) Each regional solid waste management board that is required to submit or has submitted a regional solid waste management plan under § 8-6-1904 or a solid waste management plan developed under the Arkansas Solid Waste Management Act, § 8-6-201 et seq., and receives

funding under this subchapter shall operate a solid waste management system that includes a computer and electronic equipment recycling program.

(d) The Arkansas Pollution Control and Ecology Commission may adopt regulations necessary to implement an effective computer and electronic equipment recycling program.

History. Acts 2007, No. 512, § 2; 2017, No. 624, § 3.

A.C.R.C. Notes. Acts 2017, No. 624, § 9, provided: "Distribution of funds from landfill disposal fees.

"(a)(1) The Chief Fiscal Officer of the State shall determine the total moneys available on the day before the effective date of this act [August 1, 2017] at 11:59 p.m. that were collected under § 8-6-612 [repealed] for computer and electronic equipment recycling programs.

"(2) The moneys available under subdivision (a)(1) of this section shall be used to fund computer and electronic equipment recycling programs under Arkansas Code § 8-6-613(c) until all moneys are distributed as provided under this subsection.

"(3)(A) The use of any interest earnings or investment earnings on the moneys available under subdivision (a)(1) of this section shall not be restricted to computer and electronic equipment recycling programs after the effective date of this act [August 1, 2017].

"(B) The interest earnings and investment earnings on the moneys available under this subsection shall be used as provided under § 8-6-605.

"(4)(A) For each fiscal year, two million five hundred thousand dollars (\$2,500,000) of the moneys available under subdivision (a)(1) of this section shall be added to the distribution of funding to regional solid waste management districts under Arkansas Code § 8-6-615.

"(B) When the balance of the moneys allocated under subdivision (a)(1) of this section is less than two million five hundred thousand dollars (\$2,500,000) for a fiscal year, all of the available moneys

remaining in the fund shall be the last moneys used to supplement the distribution to the regional solid waste management districts under § 8-6-615 for that fiscal year.

"(5) For each fiscal year, the Arkansas Department of Environmental Quality shall determine the amount of the moneys allocated under subdivision (a)(4) of this section that are included in each regional solid waste management district's fund distribution under § 8-6-615 and provide that information to the regional solid waste management districts.

"(6)(A) Except as otherwise provided under subdivision (a)(6)(B) of this section, each regional solid waste management district shall use the moneys received under subdivision (a)(5) of this section for computer and electronic equipment recycling programs.

"(B) Moneys received under this section by a regional solid waste management district but not needed for computer and electronic equipment recycling may be used for another recycling project operated by the regional solid waste management district only if the regional solid waste management board that governs a regional solid waste management district certifies that the funds are not needed for the approved computer and electronic equipment recycling program.

"(b) This section expires after the final distribution of the moneys allocated under subdivision (a)(4)(B) of this section to the regional solid waste management districts."

Amendments. The 2017 amendment inserted present (c); redesignated former (c) as (d); and substituted "regulations" for "reasonable rules" in (d).

8-6-614. [Repealed.]

Publisher's Notes. This section, concerning disposal fees effective date, was repealed by Acts 2015, No. 1176, § 1. The

section was derived from Acts 2007, No. 512, § 2.

8-6-615. Distribution of funds to regional solid waste management districts — Reporting requirements.

(a)(1)(A) Funds collected under this subchapter and deposited into the State Treasury to the credit of the Solid Waste Management and Recycling Fund, less up to twenty percent (20%) for administrative support for the Arkansas Department of Environmental Quality, shall be allocated annually to each of the approved regional solid waste management districts utilizing a combination of the two (2) methods stated in subsections (b) and (c) of this section.

(B) Fifty percent (50%) of the funds shall be determined using the method provided in subsection (b) of this section, and fifty percent (50%) shall be determined using the method provided in subsection (c) of this section.

(C) The total figures obtained from each method shall be combined to arrive at each regional solid waste management district's fund distribution.

(b)(1)(A) The department shall determine the amount of funds within each planning and development district organized under § 14-166-201 et seq., and recognized by the Governor, based on the same distribution as general revenue support is distributed to the planning and development districts in the current fiscal year.

(B) The department shall adjust the distribution described in subdivision (b)(1)(A) of this section within the planning and development districts to coincide with the boundaries of the regional solid waste management districts by determining each county's share of the funds available within each planning and development district.

(C) Each county's share shall be based on the proportion that each county's population bears to the total population in the planning and development district to which the county is assigned, multiplied by the amount of funds determined to be available within the planning and development district.

(D) The county's proportional share as determined under this subdivision (b)(1) shall be added to all other counties' shares within the same regional solid waste management district.

(2) The formula to be used under this subsection is as follows:

(A) Divide fifty percent (50%) of the total remaining funds equally by the eight (8) regional planning and development districts;

(B) Multiply the quotient obtained under subdivision (b)(2)(A) of this section by the most recent federal decennial census population of each county; and

(C)(i) Divide the product obtained under subdivision (b)(2)(B) of this section by the planning and development district population in which the county is located to determine the portion per county.

(ii) Individual county portions are grouped and totaled by each new regional solid waste management district to determine each regional solid waste management district's allocation.

(c)(1) The remaining fifty percent (50%) of the funds shall be based on the ratio of the district's 2010 or current decennial census population divided by the most recent federal decennial census state population.

(2) The formula to be used under this subsection is as follows:

(A) Divide each solid waste management district's total population by the state's most recent federal decennial census population; and

(B) Multiply the quotient obtained under subdivision (c)(2)(A) of this section by the total remaining funds to determine each regional solid waste management district's allocation.

(d)(1) After August 1, 2017, and for each subsequent fiscal year, each regional solid waste management board that receives funds under this section shall provide a report by November 1 to the department that explains how the board spent the funding received under this section in the previous fiscal year.

(2) The report under this subsection shall include the following information concerning the amount of expenditures in the previous fiscal year from the funds received under this section for:

(A) Equipment and material purchases; and

(B) Operation costs.

(3) The report shall be in a spreadsheet form as prescribed by the department.

(4) The Arkansas Pollution Control and Ecology Commission may promulgate regulations necessary for funding and program reporting, accountability, and oversight under this subsection.

History. Acts 2013, No. 1333, § 5; 2017, No. 624, §§ 4, 5.

A.C.R.C. Notes. Acts 2017, No. 624, § 9, provided: "Distribution of funds from landfill disposal fees.

"(a)(1) The Chief Fiscal Officer of the State shall determine the total moneys available on the day before the effective date of this act [August 1, 2017] at 11:59 p.m. that were collected under § 8-6-612 [repealed] for computer and electronic equipment recycling programs.

"(2) The moneys available under subdivision (a)(1) of this section shall be used to fund computer and electronic equipment recycling programs under Arkansas Code § 8-6-613(c) until all moneys are distributed as provided under this subsection.

"(3)(A) The use of any interest earnings or investment earnings on the moneys available under subdivision (a)(1) of this section shall not be restricted to computer and electronic equipment recycling programs after the effective date of this act [August 1, 2017].

"(B) The interest earnings and investment earnings on the moneys available

under this subsection shall be used as provided under § 8-6-605.

"(4)(A) For each fiscal year, two million five hundred thousand dollars (\$2,500,000) of the moneys available under subdivision (a)(1) of this section shall be added to the distribution of funding to regional solid waste management districts under Arkansas Code § 8-6-615.

"(B) When the balance of the moneys allocated under subdivision (a)(1) of this section is less than two million five hundred thousand dollars (\$2,500,000) for a fiscal year, all of the available moneys remaining in the fund shall be the last moneys used to supplement the distribution to the regional solid waste management districts under § 8-6-615 for that fiscal year.

"(5) For each fiscal year, the Arkansas Department of Environmental Quality shall determine the amount of the moneys allocated under subdivision (a)(4) of this section that are included in each regional solid waste management district's fund distribution under § 8-6-615 and provide that information to the regional solid waste management districts.

“(6)(A) Except as otherwise provided under subdivision (a)(6)(B) of this section, each regional solid waste management district shall use the moneys received under subdivision (a)(5) of this section for computer and electronic equipment recycling programs.

“(B) Moneys received under this section by a regional solid waste management district but not needed for computer and electronic equipment recycling may be used for another recycling project operated by the regional solid waste management district only if the regional solid

waste management board that governs a regional solid waste management district certifies that the funds are not needed for the approved computer and electronic equipment recycling program.

“(b) This section expires after the final distribution of the moneys allocated under subdivision (a)(4)(B) of this section to the regional solid waste management districts.”

Amendments. The 2017 amendment substituted “this subchapter” for “§ 8-6-607” in (a)(1)(A); and added (d).

8-6-616. [Repealed.]

Publisher’s Notes. This section, concerning distribution of funds to regional solid waste management districts for computer and electronic equipment recycling

programs, was repealed by Acts 2017, No. 624, § 6. The section was derived from Acts 2015, No. 1176, § 2.

SUBCHAPTER 7 — REGIONAL SOLID WASTE MANAGEMENT DISTRICTS AND BOARDS

- SECTION.
- 8-6-701. Purpose — Legislative findings — Construction.
 - 8-6-702. Definitions.
 - 8-6-703. Creation of districts and boards — Members of boards.
 - 8-6-704. Boards — Powers and duties.
 - 8-6-705. Needs assessments.
 - 8-6-706. Solid waste landfill and transfer station permits.
 - 8-6-707. Creation of new regional districts.
 - 8-6-708. Procedures and regulations.
 - 8-6-709. Agreements implementing subchapter.
 - 8-6-710. Solid waste management responsibility.
 - 8-6-711. District solid waste management system.

- SECTION.
- 8-6-712. Regulation of solid waste disposal.
 - 8-6-713. Restriction on local government bonds and pledges.
 - 8-6-714. Rents, fees, and charges.
 - 8-6-715. Eminent domain.
 - 8-6-716. Regional needs assessment.
 - 8-6-717. [Repealed.]
 - 8-6-718. Waste tire collection center.
 - 8-6-719. Regional composting program.
 - 8-6-720. Opportunity to recycle — Recyclable materials collection centers.
 - 8-6-721. Licensing haulers of solid waste.
 - 8-6-722. Penalties.
 - 8-6-723. Alternative formation of original districts.
 - 8-6-724. Regional standards.

A.C.R.C. Notes. Acts 1989, No. 870, § 15, provided: “The provisions of this act shall be in addition and supplemental to all other laws of Arkansas now in effect pertaining to solid waste and solid waste management and regulation, and shall repeal only such laws or parts of laws as may be specifically in conflict with this act.”

Acts 1991, No. 752, § 5, provided: “Any

solid waste management system operating under the authority of § 14-233-101 et seq. with five (5) or more counties currently being served by these authorities upon the passage of this act shall, upon notification to the regional board and the Commission, shall be designated a regional solid waste management district. The governing body of the district shall be as determined by the authority by resolu-

tion."

Publisher's Notes. Acts 1989, No. 870 and Acts 1991, No. 319 were held to be unconstitutional as applied to solid wastes originating outside the State of Arkansas in *Southeast Ark. Landfill, Inc. v. Arkansas Dep't of Pollution Control and Ecology*, 981 F.2d 372 (8th Cir. 1992).

Acts 1991, No. 752, § 1, provided: "The Arkansas General Assembly makes the following findings:

"(1) The present landfill capacity in the State of Arkansas is inadequate and is at or near the critical point;

"(2) As of July 30, 1990, the capacity in Arkansas was about 4.3 years of landfill life for 63 municipal solid waste landfills;

"(3) Adequate solid waste management planning is not possible at the present time because of the lack of accurate statistics on industrial landfill capacity and use; and

"(4) The state has taken important steps to encourage recycling but a much greater effort is necessary to assist in addressing out solid waste management needs."

Effective Dates. Acts 1989, No. 870, § 16; Mar. 22, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly of the State of Arkansas that the current system regulating solid waste in Arkansas does not foster long-range planning or efficient allocation of the State's solid waste resources; that some areas are facing serious shortages of capacity to the point of crisis and other areas have excess capacity to the point it wastes resources; and therefore to conserve precious financial resources and to avoid unnecessary land and water pollution, a system of regional solid waste planning should be implemented. Therefore, in order to address this serious environmental problem, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 9, § 5; Jan. 31, 1991. Emergency clause provided: "The present moratorium on out-of-state solid waste being received into landfills of this state expires January 31, 1991; this act extends that moratorium until March 2, 1991; that unless this act goes into effect immedi-

ately the existing law will expire and this law will not go into effect until after March 2, 1991. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 752, § 9; Mar. 26, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that some areas of the state are facing critical shortages of solid waste disposal capacity due to the difficulties in siting landfill facilities and the difficulties of financing public waste recovery and disposal facilities at the local level. It is found that regional solid waste authorities are needed to expedite the financing, siting, and operation of new waste management facilities in order that the health and welfare of the citizens of Arkansas be insured and that the state's environment be protected. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 619, § 8; Mar. 22, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that expediting the transfer of solid waste between solid waste management districts will significantly benefit the districts, the citizens of Arkansas, and the environment; and this act is necessary for the immediate preservation of the public peace, health and safety; therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 341, § 5; Mar. 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the law concerning the transfer and receipt of solid waste in the State of Arkansas is inadequate. This bill will expand the ability of Regional Solid Waste Management Districts to seek the effective disposal of solid waste. Providing these agreements will enhance districts' ability to manage solid waste in a more cost-effective manner.

Immediate action on this bill is necessary to provide uninterrupted solid waste disposal services throughout the state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 631, § 5: Mar. 16, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the proper siting of transfer stations is essential to achieve the goals of efficient, effective, and environmentally sound regional solid waste management and planning. It is found that the regional solid waste management districts and boards must have the authority to evaluate, manage and coordinate the siting, location, and operation of transfer stations in order that the health and welfare of the citizens of Arkansas be ensured and the state's environment be protected. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the

expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2011, No. 209, § 3: Mar. 8, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that unintended consequences of court action regarding the wording of Arkansas Code § 8-6-714, have been curtailed or discontinued a main source of funding for many of the programs of the solid waste management districts; that reinstatement of these funding sources and the immediate collection of these fees will put the Solid Waste Management District's budgets back on track; and that this act is immediately necessary because no other funding source in state government currently exists to continue these programs of the Solid Waste Management Districts to provide services necessary to the health and welfare of Arkansas citizens and to safeguard the state's fragile ecological health and well being. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Ark. L. Rev. Note, In re Southeast Arkansas Landfill and the Commerce Clause: Welcome to the Arkansas Depository for Solid Waste, 46 Ark. L. Rev. 1027.

U. Ark. Little Rock L.J. Note, Environmental Law — Conservation — New Jersey Mandatory Statewide Source Separation and Recycling of Solid Waste Act, 11 U. Ark. Little Rock L.J. 733.

Survey, Water and Environmental Law, 12 U. Ark. Little Rock L.J. 665.

Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

Legislative Survey, Environmental Law, 16 U. Ark. Little Rock L.J. 111.

CASE NOTES

Constitutionality.

Those portions of Act 870 of 1989 and Act 319 of 1991 which discriminate on

their face against solid waste originating outside the State of Arkansas violate the Commerce Clause (U.S. Const., Art. 1,

§ 8) and are thus unconstitutional. *South-east Ark. Landfill, Inc. v. Ark. Dep't of Pollution Control & Ecology*, 981 F.2d 372 (8th Cir. 1992).

8-6-701. Purpose — Legislative findings — Construction.

The purpose of this subchapter is to protect the public health and the state's environmental quality by establishing regional solid waste management and planning. The current system, relying upon solid waste management by individual counties and municipalities, has fostered present conditions in which certain areas of the state are facing capacity shortages of crisis proportions, while others experience a surfeit of capacity with individual disposal facilities which cannot muster the resources for environmentally responsible operators. Given these disparate environmental and economic concerns, the General Assembly concludes that regional solid waste management and planning, under the oversight of the Arkansas Department of Environmental Quality and the Arkansas Pollution Control and Ecology Commission, is essential to address the imminent and future needs of the state. The terms and obligations of this subchapter shall be liberally construed so as to achieve remedial intent.

History. Acts 1989, No. 870, § 1; 1991, No. 752, § 2; 1999, No. 1164, § 70.

CASE NOTES

Bankruptcy.

Solid waste district that was established pursuant to § 8-6-701 et seq. was not eligible under 11 U.S.C. § 109 to declare bankruptcy because it was neither "local" nor an "improvement district" that was specifically authorized to file bankruptcy pursuant to § 14-74-102; even assuming arguendo that the district was qualified under state law to seek relief under Chapter 9 of the Bankruptcy Code,

its petition had to be dismissed pursuant to 11 U.S.C. § 921 because it did not act in good faith when it borrowed money to conduct operations but decided not to collect a service fee from residents and businesses within the district because board members believed that imposing the fee would have cost them votes. *In re Ozark Mt. Solid Waste Dist.*, No. 3:14-bk-70015, 2014 Bankr. LEXIS 5226 (Bankr. W.D. Ark. Aug. 5, 2014).

8-6-702. Definitions.

As used in this subchapter:

- (1) "Board" or "regional board" means a regional solid waste management board established pursuant to this subchapter;
- (2) "Commission" means the Arkansas Pollution Control and Ecology Commission;
- (3) "Department" means the Arkansas Department of Environmental Quality;
- (4) "Director" means the Director of the Arkansas Department of Environmental Quality;

(5) “Disposal site” means any place at which solid waste is dumped, accepted, or disposed of for final disposition by landfilling, incinerating, composting, or any other method;

(6) “District” means a regional solid waste management district;

(7) “Interested party” means the director or his or her designee, the board, the person making application to the board, or any person submitting written comments on an application within the public comment period;

(8) “Landfill” means a permitted landfill under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.;

(9) “Materials in the recycling process” means ferrous and nonferrous metals diverted or removed from the solid waste stream so that they may be reused, as long as such materials are processed or handled using reasonably available processing equipment and control technology as determined by the director, taking cost into account, and a substantial amount of the materials are consistently utilized to manufacture a product which otherwise would have been produced using virgin material;

(10) “Recyclable materials” or “recyclables” means those materials from the solid waste stream that can be recovered for reuse in present or reprocessed form;

(11) “Recyclable materials collection center” or “collection center” means a facility which receives or stores recyclable materials prior to timely transportation to material recovery facilities, markets for recycling, or disposal;

(12) “Recycling” means the systematic collection, sorting, decontaminating, and returning of waste materials to commerce as commodities for use or exchange;

(13) “Solid waste” means all putrescible and nonputrescible wastes in solid, semisolid, or liquid form, including, but not limited to, yard or food waste, waste glass, waste metals, waste plastics, wastepaper, waste paperboard, and all other solid and semisolid wastes resulting from industrial, commercial, agricultural, community, and residential activities, but does not include materials in the recycling process as defined in this section;

(14) “Solid waste management system” means the same as provided in § 8-6-203;

(15) “Source separation” means the act or process of removing a particular type of recyclable material from the solid waste stream at the point of generation or at a point under control of the generator for the purpose of collection and recycling; and

(16) “Yard waste” means grass clippings, leaves, and shrubbery trimmings.

History. Acts 1989, No. 870, § 2; 1991, No. 752, § 2; 1993, No. 479, § 1; 1999, No. 1164, § 71.

8-6-703. Creation of districts and boards — Members of boards.

(a)(1)(A) The eight (8) regional solid waste planning districts created by Acts 1989, No. 870, and each solid waste service area created pursuant to Acts 1989, No. 870, are renamed regional solid waste management districts.

(B) Each regional solid waste management district shall be governed by a regional solid waste management board.

(2) The boundaries of a regional solid waste management district may be modified and new regional solid waste management districts may be created pursuant to § 8-6-707.

(b)(1) Each board shall be composed of representatives of:

(A) The counties within the regional solid waste management district;

(B) All cities of the first class within the regional solid waste management district;

(C) All cities with a population over two thousand (2,000) according to the most recent federal decennial census within the regional solid waste management district;

(D) The largest city of each county within the regional solid waste management district; and

(E) Any city that holds a position on any board on or after January 1, 2010, within the regional solid waste management district.

(2) The county judge of each county within the regional solid waste management district and the mayor of each city entitled to a representative in the regional solid waste management district shall serve on the board, unless the county judge or mayor elects instead to appoint a member as follows:

(A) The county judge, with confirmation by the quorum court of each county within the regional solid waste management district, shall appoint one (1) member to the board; and

(B) The mayor, with confirmation by the governing body of each city entitled to a representative in the regional solid waste management district, shall appoint one (1) member.

(c)(1) Each board shall have a minimum of five (5) members.

(2) If the number of members serving under subsection (b) of this section is less than five (5), additional members necessary to make the total number equal five (5) shall be appointed by mutual agreement of the other board members and shall represent the general public within the regional solid waste management district.

(3) Appointed board members shall serve at the pleasure of the appointing body and a minimum term of one (1) year.

(4) Vacancies shall be filled for any unexpired term of an appointed member in the same manner as provided in subsection (b) of this section and subdivision (c)(2) of this section.

(5)(A) A majority of the membership of the board in person or represented by proxy shall constitute a quorum.

(B) A majority vote of those members present shall be required for any action of the board.

(6) Each board shall annually select a chair.

History. Acts 1989, No. 870, § 3; 1991, No. 752, §§ 2, 3; 2003, No. 215, § 1; 2011, No. 884, § 1; 2013, No. 316, § 1.

Publisher's Notes. Acts 1989, No. 750, § 3, provided, in part: "There are hereby created eight (8) Regional Solid Waste Planning Districts and eight (8) Regional Solid Waste Planning Boards whose respective jurisdictions shall correspond to the boundaries of the Planning and Development Districts established pursuant to Arkansas Code § 14-166-202."

The terms of the general public members of each regional solid waste management board are arranged so that one (1) term expires every year.

Acts 1991, No. 752, § 2, provided in part, that the initial appointed members of the board would draw lots to determine terms of appointment so that, as nearly as possible, the terms of an equal number of members will expire each year.

Acts 1991, No. 752, § 3 provided, in part:

"(a) A county shall not be included in the boundaries of more than one (1) regional solid waste management district formed from a regional solid waste plan-

ning district created pursuant to this act.

"(b) The members of regional solid waste planning boards and solid waste service area boards shall serve as board members of their respective regional solid waste management districts until sixty (60) days after the effective date of this act.

"(c) New members shall be appointed to the regional solid waste management boards pursuant to this act. The terms of the new appointees to the regional solid waste management boards shall begin sixty (60) days after the effective date of this act.

"(d) The first meeting of the new board members shall be held within ninety (90) days after the effective date of this act. At the initial meeting the members shall draw lots to determine their terms of appointment so that, as nearly as possible, the terms of an equal number of members will expire each year."

Amendments. The 2013 amendment inserted "regional solid waste management" preceding "district" throughout the section; and added "within the regional solid waste management district" at the end of (b)(1)(B), (b)(1)(C) and (b)(1)(D).

8-6-704. Boards — Powers and duties.

(a) The regional solid waste management boards have the following powers and duties:

(1) To collect data, study, and initially evaluate the solid waste management needs of all localities within their regional solid waste management districts, as provided in § 8-6-716, and to publish their findings as a regional needs assessment;

(2) To evaluate on a continuous basis the solid waste needs of their districts and thereby update the regional needs assessments at least biennially;

(3) To formulate recommendations to all local governments within their districts on solid waste management issues and to formulate plans for providing adequate solid waste management;

(4) To issue or deny certificates of need to any applicant for a solid waste disposal facility permit within their districts with the exception of permits for landfills when a private industry bears the expense of operating and maintaining the landfill solely for the disposal of waste generated by the industry or wastes of a similar kind or character;

(5) To petition the Director of the Arkansas Department of Environmental Quality to issue, continue in effect, revoke, modify, or deny any permit for any element of a solid waste management system located

within a district based on compliance or noncompliance with the solid waste management plan of the district;

(6) To adopt rules under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., as are reasonably necessary to assure public notice and participation in any findings or rulings of the regional solid waste management boards and to administer the duties of the regional solid waste management boards;

(7) To establish programs to encourage recycling;

(8) To adopt official seals and alter them at pleasure;

(9) To maintain offices at such places as they may determine;

(10) To sue and be sued in their own names and to plead and be impleaded;

(11) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of a district, including, but not limited to, entering into contracts and agreements with private entities for provision of services;

(12) To carry out all other powers and duties conferred by this subchapter and § 8-6-801 et seq.;

(13)(A) To enter into agreements with another district to allow a district or any person within that district to transfer solid waste into another district.

(B) However, notice of all such authorizations shall be submitted to the Arkansas Department of Environmental Quality within thirty (30) days and shall be incorporated into the regional needs assessment in its next regular update; and

(14)(A) To authorize a disposal facility within a district to accept the receipt of solid waste from an adjoining district upon request by the generator of that solid waste, provided that the request specifies the disposal facility and the nature and estimated annual volume of solid waste to be received.

(B) However, notice of all such authorizations shall be submitted to the department within thirty (30) days and shall be incorporated into the regional needs assessment in its next regular update.

(b)(1) The regional solid waste management boards may:

(A) Apply for such permits, licenses, certificates, or approvals as may be necessary to construct, maintain, and operate any portion of a solid waste management system and to obtain, hold, and use licenses, permits, certificates, or approvals in the same manner as any other person or operating unit of any other person;

(B) Employ such engineers, architects, attorneys, real estate counselors, appraisers, financial advisors, and other consultants and employees as may be required in the judgment of the district and fix and pay their compensation from funds available to the district therefor;

(C) Purchase all kinds of insurance, including, but not limited to, insurance against tort liability, business interruption, and risks of damage to property; and

(D) Employ an environmental officer who may:

- (i) Inspect all landfills;
- (ii) Inspect other solid waste facilities;
- (iii) Inspect waste haulers and other vehicles;
- (iv) Ensure compliance with all district regulations;
- (v) Collect evidence of noncompliance and present the evidence to the prosecuting attorney; or
- (vi) Issue citations for the violation of any district regulation.

(2)(A) If a regional solid waste management board employs an environmental officer under this subsection, then the environmental officer may complete the training course for law enforcement officers at the Arkansas Law Enforcement Training Academy.

(B) After satisfactory completion of the training course, the environmental officer shall be a law enforcement officer.

(C) After satisfactory completion of the training course, the environmental officer may:

- (i) Carry firearms;
- (ii) Execute and serve a warrant or other processes issued under the authority of the district and related to violations of district regulations; and
- (iii) Make arrests and issue citations for violations of district regulations regarding environmental protection.

(c) The regional solid waste management boards shall adopt and follow county purchasing procedures, as provided in § 14-22-101 et seq., as the approved purchasing procedures for the districts.

(d)(1) Each regional solid waste management board shall procure an annual financial audit of the district. Such audits shall be conducted following each board's fiscal year end. Regional solid waste management funds which are subject to audit in conjunction with a single audit performed consistent with Governmental Auditing and Reporting Standards are not required to have a separate audit.

(2)(A) Each district shall choose and employ accountants in good standing with the Arkansas State Board of Public Accountancy to conduct these audits in accordance with Governmental Auditing and Reporting Standards issued by the United States Comptroller of the Currency.

(B) The district shall pay for such audits from their administrative moneys.

(3) Each audit report and accompanying comments and recommendations shall be reviewed by the appropriate regional solid waste management board.

(4) Copies of each audit report of a district shall be filed with the department and with Arkansas Legislative Audit. In addition, one (1) copy of the audit report shall be kept for public inspection with the books and records of the district.

(5) Failure to provide a full and complete audit report, as required by this subchapter, shall prohibit future distribution of revenue from funding programs that are administered by the department unless otherwise authorized by the director.

History. Acts 1989, No. 870, § 4; 1991, 341, § 1; 2005, No. 1289, § 1; 2007, No. 752, § 2; 1993, No. 619, § 1; 1995, No. 209, §§ 1, 2; 2009, No. 1199, § 8. 163, § 1; 1997, No. 398, § 1; 1999, No.

8-6-705. Needs assessments.

(a) All needs assessments required by this subchapter are subject to review and approval for completeness by the Arkansas Department of Environmental Quality.

(b) Failure to provide complete assessments as required by this subchapter may provide the department with grounds to initiate enforcement actions against the regional solid waste management boards or their component governmental entities. Pursuant to established administrative procedures, sanctions may be imposed, including, but not limited to, denial, discontinuation, or reimbursement of any grant funding administered by the department to a regional solid waste management district or any of its component governmental entities.

(c) The department may award grants to the districts for the development of the initial regional needs assessments, for the biennial updates, and for any other update required by the law.

History. Acts 1989, No. 870, § 7; 1991, No. 752, § 2; 1999, No. 1164, § 72.

8-6-706. Solid waste landfill and transfer station permits.

(a)(1) Before an application for a permit is submitted to the Arkansas Department of Environmental Quality, an applicant for a solid waste landfill permit or a transfer station permit shall obtain a certificate of need from the regional solid waste management board that has jurisdiction over the proposed site, with the exception of permits for landfills when a private industry bears the expense of operating and maintaining the landfill solely for the disposal of waste generated by the industry or wastes of a similar kind or character under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

(2) The department may deny any permit based upon the denial of a certificate of need by any regional solid waste management board.

(b)(1) Applicants for a solid waste landfill permit or transfer station permit must petition the regional board with jurisdiction over the proposed site for a certificate of need in accordance with procedures adopted by the board.

(2) The applicant's petition must establish, at a minimum, that the proposed disposal facility:

(A) Is consistent with the regional planning strategy adopted by the board in the regional needs assessment or the regional solid waste management plan;

(B) Does not conflict with existing comprehensive land use plans of any local governmental entities;

(C) Does not disturb an archaeological site as recognized by the Arkansas Archeological Survey or a rare and endangered species

habitat as recognized by the Arkansas State Game and Fish Commission or the United States Fish and Wildlife Service;

(D) Will not adversely affect the public use of any local, state, or federal facility, including, but not limited to, parks and wildlife management areas;

(E) Does not conflict with the requirements of state or federal laws and regulations on the location of disposal facilities;

(F) If located in the hundred-year floodplain, does not restrict the flow of the hundred-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health or the environment; and

(G) If the transfer station proposes to transfer waste outside of the regional solid waste management district in which it is located, the petition shall also contain documentation that the district to which the waste will be transferred has been notified and that the board of that district has approved the receipt of the waste. This provision shall not apply if the waste is being transported for disposal outside the geographical limits of this state.

(c) Any interested party to a certificate of need determination by a board may appeal the decision to the Director of the Arkansas Department of Environmental Quality pursuant to procedures adopted by the Arkansas Pollution Control and Ecology Commission. The director may issue a permit despite the denial of a certificate of need if the director finds upon appeal that the decision of the board was not supported by substantial evidence.

(d) After notice and a public hearing to be held by the board in the county where the proposed landfill or transfer station is to be located, a certificate of need shall be issued or denied by the board based upon an evaluation of:

(1) The information provided by the applicant in the petition for a certificate of need;

(2) The requirements and considerations of any needs assessments prepared pursuant to this section;

(3) The location of the applicant's proposed landfill or transfer station based on the district's needs and its highway and road system;

(4) For landfill permits, the board shall consider the need for the landfill based upon the district's excess projected capacity which is currently permitted for operation, but in no event shall the district's excess permitted projected capacity exceed thirty (30) years, unless the city or county government within whose jurisdiction the proposed landfill is located authorizes through adoption of a resolution approval of the excess capacity;

(5) Any solid waste management system plans promulgated and approved pursuant to §§ 8-6-211 and 8-6-212 to the extent these solid waste management system plans conform to an overall regional planning strategy;

(6) A detailed history of the applicant's record and that of the stockholders and officers with respect to violations of environmental

laws and regulations of the United States or any state or any political subdivision of any state; and

(7) Any procedures adopted by the board for issuance of a certificate of need.

(e) All landfill permit applications shall specify the service areas which the landfill will serve under the permit.

(f) All transfer station permit applications shall specify the service areas which the transfer station shall serve under the permit and shall also specify the facility to which waste from the transfer station will be transferred.

History. Acts 1989, No. 870, §§ 6, 8; 1991, No. 9, § 1; 1991, No. 752, § 2; 1999, No. 631, § 1; 1999, No. 1164, § 73; 2003, No. 672, § 1; 2007, No. 208, § 1.

A.C.R.C. Notes. As enacted, the language “From on and after January 31, 1991” appeared at the beginning of (a).

CASE NOTES

In General.

Order approving landfill’s application to expand was upheld; the Arkansas Pollution Control and Ecology Commission concluded that the Arkansas Tri-County Solid Waste District Board’s denial of a certifi-

cate of need due to the geology of the area was improper under subsection (d) of this section. *Tri-County Solid Waste Dist. v. Ark. Pollution Control & Ecology Comm’n*, 365 Ark. 368, 230 S.W.3d 545 (2006).

8-6-707. Creation of new regional districts.

(a)(1)(A) After notification of the appropriate regional solid waste management board or boards, the Arkansas Pollution Control and Ecology Commission may designate a county or counties within each regional solid waste management district or counties within two (2) or more districts as a new district pursuant to the limitations of this section.

(B) New districts shall be designated for purposes that address local exigencies, needs, and other requirements of this subchapter.

(C) A district shall only be composed of whole county jurisdictions, and each district shall contain more than one (1) county unless that county has a population of:

(i)(a) At least fifty thousand (50,000) according to the most recent federal decennial census.

(b) However, a single-county district that has been approved under this section shall not cease to be a valid district under this section if the population of the single county composing the district is determined to be less than fifty thousand (50,000) according to a federal decennial census occurring after the approval of the single-county district; or

(ii) At least twenty-five thousand (25,000) according to the most recent federal decennial census and the county is served by one (1) county sanitation authority under § 14-233-104.

(2) Commission approval of district boundaries shall be sought and obtained pursuant to administrative procedures promulgated by the commission.

(b)(1) Counties and municipalities included in a new or revised district shall cease to be members of any other district.

(2) The term of a board member representing a county or municipality shall immediately expire upon the inclusion of the county or municipality within a new district.

(c) After notification of the appropriate boards, the commission, upon the request of a county or district, may transfer a county into an existing district.

History. Acts 1989, No. 870, § 9; 1991, No. 752, § 2; 1991, No. 786, § 7; 2013, No. 371, § 1; 2013, No. 1244, § 1; 2015, No. 1162, § 1.

Publisher's Notes. The terms of the general public members of each regional solid waste management board are arranged so that one (1) term expires every year.

Pursuant to this section, Acts 1991, No. 786, § 7, which amended former subdivision (b)(2)(A) of this section, is superseded by Acts 1991, No. 752, § 2.

Acts 1991, No. 786, § 37, provided: "The enactment and adoption of this Act shall not repeal, expressly or impliedly, the acts

passed at the regular session of the 78th General Assembly. All such acts shall have full effect and, so far as those acts intentionally vary from or conflict with any provision contained in this Act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas Code of 1987."

Amendments. The 2013 amendment by No. 371 rewrote (a)(1)(C).

The 2013 amendment by No. 1244 rewrote (a).

The 2015 amendment inserted "federal" in (a)(1)(C)(i)(b).

8-6-708. Procedures and regulations.

The Arkansas Pollution Control and Ecology Commission is authorized to prescribe procedures and regulations:

(1) To guide the initial and continued organization and operation of the respective regional solid waste management boards in accordance with the purposes of this subchapter and § 8-6-801 et seq.;

(2) To assure public notice and participation prior to adoption of regional needs assessments, findings, or reports made by the boards;

(3) To defray some of the costs of the administration of this subchapter, including, but not limited to, inspections and technical review of submissions required by this subchapter by setting graduated surcharges upon any waste stream increase in excess of ten percent (10%) as a result of receipt of solid waste from outside the regional solid waste management district; and

(4) To require prompt compliance with the requirements of this subchapter and § 8-6-801 et seq.

History. Acts 1989, No. 870, § 10; 1991, No. 752, § 2.

8-6-709. Agreements implementing subchapter.

(a) Any regional solid waste management board may enter into agreements for the specific purpose of implementing this subchapter.

(b) Any such agreement shall specify the following:

(1) Its duration;

(2) The precise organization, composition, and nature of any separate legal or administrative entity created thereby, together with the powers delegated thereto, provided such entity may be legally created;

(3) Its purpose or purposes;

(4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor, provided that such legal entity may incur indebtedness for the lease or purchase of land, equipment, and other expenses necessary to the operation of a solid waste management system or any part thereof;

(5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(6) The degree to which the joint or individual plans are drawn in accordance with the regional needs assessments required by this subchapter; and

(7) Any other necessary and proper matters.

History. Acts 1989, No. 870, § 11;
1991, No. 752, § 2.

8-6-710. Solid waste management responsibility.

(a)(1) Each regional solid waste management board shall be the governmental entity primarily responsible for providing a solid waste management system for the regional solid waste management district.

(2) The counties and municipalities shall continue to be responsible for solid waste management services within their corporate boundaries until the board determines in writing that the district is able to assume the solid waste management responsibilities of the municipality or county.

(b) Counties and municipalities in a district may provide a portion of the solid waste management services, such as solid waste pickup, while the board provides other services and has assumed responsibility therefor, such as disposal facilities, in which event, the counties and municipalities shall retain only the responsibility for the system related to the services provided. In performing those retained responsibilities or assisting the board in performing its responsibilities, counties and municipalities shall retain all present legal powers and authority related to those responsibilities, including, but not limited to, power and authority to levy and collect fees and charges. Counties and municipalities may provide additional solid waste management services in excess of those provided by the district at their own expense so long as such solid waste management services conform to the district solid waste management plan.

History. Acts 1991, No. 752, § 2.

8-6-711. District solid waste management system.

(a) A regional solid waste management district is authorized to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in facilities of any nature necessary or desirable for the control, collection, removal, reduction, disposal, treatment, or other handling of solid waste.

(b)(1) A regional solid waste management district may elect to acquire the ownership or use of elements of solid waste management systems owned or controlled by municipalities, counties, improvement districts, or sanitation authorities within the regional solid waste management district by contract on such terms as are mutually agreed to be necessary, convenient, or desirable.

(2)(A) If the regional solid waste management district has elected such acquisition of ownership or use, the regional solid waste management district shall also have assumed the responsibility associated with that project or element, as contemplated by § 8-6-714.

(B) If the regional solid waste management district and the other entity or entities which are parties to the acquisition cannot mutually agree on the fair value to be paid and the method of compensation for the acquired asset, then either party may have that value and method adjudicated as to fairness by the circuit court having jurisdiction of the regional solid waste management district's principal office, in the manner of a declaratory judgment and not in the nature of eminent domain.

(C) The regional solid waste management district shall have the discretion to proceed or not to proceed with the acquisition after the declaration is obtained.

(c)(1)(A) A regional solid waste management district may elect to seek a permit for a Class I landfill to be owned by the State of Arkansas.

(B) Provided, however, that only one (1) such Class I landfill shall be sited in each of the eight (8) planning and development districts established pursuant to § 14-166-202.

(2) Upon the regional solid waste management district's obtaining a permit to operate, ownership interest in said Class I landfill shall be vested with the State of Arkansas through deed or other conveyance.

(d) An existing and operating solid waste facility within the regional solid waste management district shall be incorporated into the regional solid waste management district solid waste management plan, or the regional solid waste management district shall acquire ownership of that solid waste facility in the manner set forth in subsection (b) of this section.

(e) Nothing in this section shall be construed to give a regional solid waste management district the power to make an acquisition described in this section without the consent of the municipalities, counties, improvement districts, or sanitation authorities involved.

History. Acts 1991, No. 752, § 2.

RESEARCH REFERENCES

Ark. L. Rev. Case Note, Johnson v. to the NIMBY Syndrome, 45 Ark. L. Rev. Sunray Services, Inc.: Possible Solutions 657.

8-6-712. Regulation of solid waste disposal.

(a) A regional solid waste management district which has an approved solid waste management plan may:

(1)(A) Require, by regulation or other legal means, that solid waste generated or collected within the boundaries of the district be delivered to a particular project for disposal, treatment, or other handling.

(B) Provided, however, that nothing in this section shall be construed as impairing legal and proper contracts existing on March 26, 1991, under the Arkansas Constitution, or the notes or other evidences of indebtedness incurred pursuant to a revenue bond issued or reissued dependent upon a project involving a stated waste stream which is a contractual condition of said indebtedness;

(2) Prohibit, by regulation or other legal means, the collection of solid waste within the boundaries of the district by persons not properly licensed by the district;

(3)(A) Authorize that a city, county, or any person in an adjoining district may deliver solid waste to a designated landfill within the district for disposal, treatment, or other handling.

(B) Provided, however, that notice of all such authorizations shall be submitted to the Arkansas Department of Environmental Quality within thirty (30) days and shall be incorporated into the district needs assessment in its next regular update;

(4) Provide, by regulation or other legal means, that no person, other than as may be designated by the district, shall engage in the collection or utilization of solid waste within the district which would be competitive with the purposes or activities of the district; and

(5) Covenant in connection with the issuance of bonds, notes, or other evidence of indebtedness to adopt any regulation described in subdivisions (a)(1), (a)(2), and (a)(4) of this section and that any regulation so adopted shall remain in full force and effect and shall be enforced so long as any bonds, notes, or other evidences of indebtedness remain outstanding.

(b) The districts shall issue rules or regulations which are consistent with and in accordance with but no more restrictive than all applicable environmental protection performance standards adopted by state law or incorporated by reference from federal law.

(c)(1) Nothing in this section shall prohibit the disposal of solid waste generated by a private industry in a permitted landfill where the private industry bears the expense of operating and maintaining the landfill solely for the disposal of waste generated by the industry or wastes of a similar kind or character.

(2) Nothing in this section shall prohibit the collection or disposal of solid waste by a municipality with an existing permitted landfill with a twenty-five-year capacity as of January 1, 1991, when the city bears the expense of operating and maintaining the landfill and the landfill complies with United States Environmental Protection Agency and department regulations.

(3) Nothing in this section shall prohibit a municipality or county from constructing or operating a facility or project to process and market recyclable materials for use as fuel.

(d) Furthermore, nothing in this subchapter shall prohibit the disposal of dead animal carcasses through means which are otherwise permitted by state law or regulation.

History. Acts 1991, No. 752, § 2; 1993, No. 619, § 2; 1999, No. 1164, § 74.

RESEARCH REFERENCES

Ark. L. Rev. Case Note, Johnson v. to the NIMBY Syndrome, 45 Ark. L. Rev. Sunray Services, Inc.: Possible Solutions 657.

8-6-713. Restriction on local government bonds and pledges.

(a) Unless approved by the regional solid waste management board, no municipality, county, improvement district, or sanitation authority within the regional solid waste management district shall:

(1) Issue any bonds for solid waste management purposes; or

(2) Pledge any revenues derived from solid waste management services for any bond issue.

(b) Notwithstanding the provisions of subsection (a) of this section, no board shall prohibit a municipality or county from issuing revenue bonds or using general obligation bonds when the purpose of such issuance or usage is the funding of a facility or project to process and market recycled materials for use as fuel.

(c) The board shall not impair any existing bond issue or other financial obligation of a municipality, county, improvement district, or sanitation authority.

History. Acts 1991, No. 752, § 2.

8-6-714. Rents, fees, and charges.

(a)(1)(A) A regional solid waste management board may fix, charge, and collect rents, fees, and charges of no more than two dollars (\$2.00) per ton of solid waste related to the movement or disposal of solid waste within the regional solid waste management district, including without limitation fees and charges:

(i) Related to the district's direct involvement with the district's disposal or treatment; or

(ii) That support the district's management of the solid waste needs of the district.

(B) The board may fix, charge, and collect fees or charges under subdivision (a)(1)(A)(ii) of this section only if the board:

(i) Employs or otherwise makes available from another agency an enforcement officer to:

(a) Enforce all local ordinances, statutes, and regulations for which the district has been previously given enforcement authority regarding solid waste including the Illegal Dump Eradication and Corrective Action Program Act, § 8-6-501 et seq.; and

(b) Seek to prevent and to identify and eliminate illegal dump sites;

(ii) Has a program for household hazardous waste collection and disposal; and

(iii) Has a program for recycling that includes rural areas of the district and the recycling of bulky waste.

(2) The board may fix, charge, and collect fees or charges for solid waste generated:

(A) Within or without the district delivered to a landfill or transfer station within the district, regardless of whether the disposal facilities are owned or operated by the district; or

(B) Within the district but delivered to a location outside the district.

(3) The board may fix, charge, and collect penalties from entities that fail to timely remit rents, fees, and charges under this section.

(4) Solid waste generated within one (1) district and delivered to another district for disposal may be assessed a fee as follows:

(A) Either the district in which the solid waste was generated or a district in which the same solid waste is transported, stored, managed, or disposed may assess the fee;

(B) The fee may be assessed against the generator, transporter, or disposal facility; and

(C) Each ton or cubic yard of waste may be assessed only one (1) fee.

(b) The fees created in this section do not apply to:

(1)(A) Solid waste generated by private industry if the private industry bears the expense of operating and maintaining the disposal facility for the solid waste; or

(B) Nonmunicipal solid waste generated by private industry and shipped to another state for recycling, treatment, or disposal;

(2) Solid waste recycled, used, or generated by steel mills or related facilities classified within Subsector 331 of the 2007 North American Industrial Classification System, as it existed on January 1, 2011;

(3) Recyclable materials that are transported, processed, or marketed for recycling;

(4) Organic materials that are delivered to a permitted composting facility;

(5) Materials that are removed from solid waste and processed for recycling;

(6) Waste tires processed through a district's waste tire program; or
(7) Household hazardous waste collected through a district's household hazardous waste program.

(c)(1) The fee created in subsection (a) of this section shall not exceed two dollars (\$2.00) per ton of solid waste.

(2) However, if weight tickets are not available, the fee shall be calculated on a volume basis at twenty-five cents (25¢) per uncompacted cubic yard or forty-five cents (45¢) per compacted cubic yard.

(3)(A) Districts shall determine by interlocal agreement how the districts shall:

- (i) Assess and administer the fee; and
- (ii) Divide the fees.

(B) If districts cannot reach an interlocal agreement regarding the division of the fees, then the fees shall be divided equally between the districts.

(d) The board may levy a service fee on each residence or business for which the board makes solid waste collection or disposal services available.

(e)(1)(A) The board may, by majority vote, require fees or delinquent fees to be collected with the real and personal property taxes of any county within the district.

(B) If the board elects to collect such fees in this manner, it shall so notify the county collector, who shall enter such fees on tax notices to be collected with the real and personal property taxes of the county.

(C) No county collector shall accept payment of any property taxes where the taxpayer has been billed for solid waste collection services unless the service fee is also receipted.

(2) If a property owner fails to pay the service fee, it shall become a lien on the property.

History. Acts 1991, No. 752, § 2; 2011, No. 209, § 2.

A.C.R.C. Notes. Acts 2011, No. 209, § 1, provided: "The General Assembly finds that:

"(1) In 1989, the General Assembly recognized the need to create regional boards to address the disposal of solid waste and encourage programs to conserve landfill capacity in the State of Arkansas that was deemed inadequate and at or near the critical point;

"(2) In 1991, as an effort to aid in the establishment of regional boards and to provide economic viability, the General Assembly granted to regional solid waste management boards certain powers to collect fees and charges and to allow the boards to carry out the mandate of the enabling legislation;

"(3) There now appears to be an economic crisis affecting a number of the regional solid waste management boards in the state because a legal challenge has been made regarding the authority of regional solid waste management boards to charge certain fees and charges;

"(4) Adequate solid waste management planning that affects the ability to charge fees and charges on solid waste generated within a district is in question because of the lack of clear direction within the existing statutes; and

"(5) The important steps the state has taken to encourage recycling and to address the state's solid waste management needs will be greatly hampered unless clear authority is given to regional solid waste management boards to charge fees and charges that will support the pro-

grams mandated by statute, but for which no other means of funding exists.”

8-6-715. Eminent domain.

(a) In the event that necessary lands needed for the accomplishment of the purposes authorized by this chapter cannot be acquired by negotiation, any regional solid waste management district is authorized to acquire the needed lands by condemnation proceedings under the power of eminent domain.

(b)(1) The proceedings may be exercised in the manner now provided for taking private property for rights-of-way for railroads as set forth in §§ 18-15-1202 — 18-15-1207.

(2) As a part of the proceedings, the district shall file an environmental impact statement with the court.

(c) Nothing in this section shall allow a district to appropriate by eminent domain any property upon which is located a permitted landfill, recycling facility, or incinerator or for which a permit for a landfill, recycling facility, or incinerator is pending.

History. Acts 1991, No. 752, § 2.

8-6-716. Regional needs assessment.

(a)(1)(A)(i) Each regional solid waste management board created pursuant to this subchapter shall prepare a regional needs assessment evaluating the solid waste management needs within its regional solid waste management district. Provided, however, that such regional needs assessments need not include an evaluation of the need for landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry or wastes of a similar kind or character.

(ii) Such regional needs assessment shall be submitted for Arkansas Department of Environmental Quality review, and the Director of the Arkansas Department of Environmental Quality shall approve or disapprove it within ninety (90) days after submission.

(B)(i) The regional needs assessments for boards created pursuant to § 8-6-703 shall be due every four (4) years.

(ii) The department may, at its discretion, stagger the due dates by random selection so that approximately one fourth ($\frac{1}{4}$) of the districts will submit a regional needs assessment each year.

(C)(i) The department will notify in writing the districts of the date on which their regional needs assessments are due.

(ii) The board may obtain an extension of that deadline from the director.

(D) A board created pursuant to § 8-6-703 in a region having a projected solid waste disposal capacity of less than five (5) years or in a region having no landfill for solid waste disposal shall prepare and submit a regional needs assessment annually, with the first regional

needs assessment due on June 30, 1995, and with updated regional needs assessments due on June 30 of each year thereafter.

(E) Any board which submitted the biennial regional needs assessment due on January 31, 1995, under prior law, shall prepare and submit its next regional needs assessment on June 30, 1996, with updated regional needs assessments due on June 30 of each year thereafter.

(2) The regional needs assessment shall include, at the minimum, the following:

(A) An evaluation of the amount of solid waste generated within the district and the amount of remaining disposal capacity, expressed in years, at the solid waste disposal facilities within the district that are permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.;

(B) An evaluation of the solid waste collection, transportation, and disposal needs of all localities within the district; and

(C) An evaluation and balancing of the environmental, economic, and other relevant factors which would be implicated by acceptance of solid waste from beyond the boundaries of the district.

(b) Each board shall update its regional needs assessment, at the minimum, every four (4) years.

(c) At a time not later than five (5) years before the disposal capacity in a region reaches its projected capacity, the board shall develop a request for proposals to increase the district’s projected capacity for solid waste disposal within the district in accordance with its regional needs assessment.

(d) No landfill shall receive solid waste from beyond the district boundaries when projected solid waste disposal capacity within the district is less than five (5) years, except as may be otherwise specified pursuant to this subchapter.

(e) No owner or operator of a landfill serving a limited area of a district shall be required to increase the landfill’s service area to accommodate the needs of the district.

History. Acts 1991, No. 752, § 2; 1993, 1995, No. 1030, § 1, subdivision No. 619, § 3; 1995, No. 1030, § 1; 1999, (a)(1)(B)(ii) ended: “No needs assessments No. 428, § 2. shall be due until March 31, 1996.”

A.C.R.C. Notes. As enacted by Acts

8-6-717. [Repealed.]

Publisher’s Notes. This section, concerning solid waste management plans, was repealed by Acts 2013, No. 1153, § 2. The former section was derived from Acts 1991, No. 752, § 2.

8-6-718. Waste tire collection center.

Beginning July 1, 1993, each regional solid waste management board shall establish a waste tire collection center at which residents of the regional solid waste management district may dispose of their waste

motor vehicle tires at no cost except as provided by regulation of the Arkansas Pollution Control and Ecology Commission or the board.

History. Acts 1991, No. 752, § 2.

8-6-719. Regional composting program.

(a) Each regional solid waste management board shall establish a program for the composting of yard waste.

(b) Each board shall establish a pilot program for the composting of yard waste collected in an area with a population of at least five thousand (5,000) persons. The pilot program shall be established in each regional solid waste management district by July 1, 1992.

History. Acts 1991, No. 752, § 2.

8-6-720. Opportunity to recycle — Recyclable materials collection centers.

(a)(1) Beginning July 1, 1992, each regional solid waste management board shall ensure that its residents have an opportunity to recycle. "Opportunity to recycle" means availability of curbside pickup or collection centers for recyclable materials at sites that are convenient for persons to use.

(2) Beginning July 1, 1993, at least one (1) recyclable materials collection center shall be available in each county of a regional solid waste management district unless the Arkansas Pollution Control and Ecology Commission grants the district an exemption. An exemption may be granted if a county is adequately served by a recyclable materials collection center in another county.

(3) Boards shall assess the operation of existing and proposed recycling centers and materials recovery facilities to determine the adequacy of these facilities for the collection and recovery of recyclable materials. Boards shall give due consideration to existing recycling facilities in ensuring the opportunity to recycle and are encouraged to use, to the extent practicable, persons engaged in the business of recycling on March 26, 1991, whether or not the persons were operating for profit.

(b) The Arkansas Department of Environmental Quality shall determine by regulation the adequacy of the facilities and the number and type of recyclable materials for which the services in this section must be provided.

(c) Each board shall provide information on how, when, and where materials may be recycled, including a promotional program that encourages source separation of residential, commercial, industrial, and institutional materials.

(d) Each board should ensure, alone or in conjunction with other boards, that materials separated for recycling are taken to markets for sale or to materials recovery facilities.

(e)(1) A board shall not prevent a person generating or collecting recyclable materials from delivering the recyclable materials to a recycling facility of the generator's or collector's choice.

(2) However, no person shall divert to personal use or commercial purpose any recyclable materials placed in a container as a part of a regional recycling program without the consent of the generator or the collector.

(3) Any person who pleads guilty or nolo contendere to or is found guilty of unlawfully diverting recyclable materials under a regional recycling program shall be guilty of a Class C misdemeanor.

(f) Each board shall incorporate into its solid waste management plan its proposal for fulfilling the obligations of this section.

(g) Nothing in this section shall be construed to prohibit the planning or implementation of any regional recycling program prior to compliance with the requirements of subsection (f) of this section.

History. Acts 1991, No. 752, § 2; 2001, No. 1720, § 4.

Cross References. Theft of recyclable materials, § 5-36-121.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Criminal Law, 24 U. Ark. Little Rock L. Rev. 429.

8-6-721. Licensing haulers of solid waste.

(a) A person who engages in the business of hauling solid waste must obtain a license from the regional solid waste management board if:

(1) The person is engaged in the collection of solid waste within the regional solid waste management district; or

(2) The person is engaged in the transportation of solid waste for disposal or storage in the regional solid waste management district.

(b)(1) A license shall be issued only to a person, partnership, corporation, association, the State of Arkansas, a political subdivision of the state, an improvement district, a sanitation authority, or another regional solid waste management district.

(2) The regional solid waste management district may engage in the hauling of solid waste within its own regional solid waste management district without licensure but shall comply with all applicable standards required under this section.

(c) The Arkansas Pollution Control and Ecology Commission shall establish classifications of haulers, which shall be used by regional solid waste management districts in licensing haulers. The classifications shall be based on the nature and size of the loads transported.

(d)(1) The commission shall promulgate minimum standards for a license to haul solid waste.

(2) One (1) of the criteria for obtaining such a license shall be the financial responsibility of the hauler.

(e) The board may impose more stringent standards than the minimum standards established by the commission.

(f) The board may set a reasonable licensing fee for each class of haulers.

History. Acts 1991, No. 752, § 2.

8-6-722. Penalties.

Any person who violates this subchapter or any regulation of the Arkansas Pollution Control and Ecology Commission or of a regional solid waste management board shall be deemed guilty of a misdemeanor. Upon conviction, the person shall be subject to imprisonment for not more than thirty (30) days or a fine of not more than one thousand dollars (\$1,000), or both imprisonment and fine.

History. Acts 1991, No. 752, § 2.

8-6-723. Alternative formation of original districts.

(a)(1) In lieu of forming a regional solid waste management district under any other provision of this subchapter, a district may be created by interlocal agreement of the local governments in any county with a population of at least ninety thousand (90,000) persons and in which there is a permitted landfill on January 1, 1991. The regional solid waste management board of the district shall be established by interlocal agreement.

(2) The creation of the district shall be effective upon the Director of the Arkansas Department of Environmental Quality's receipt of written notice in the form of a joint resolution by the local governments.

(b)(1) In lieu of forming a district under any other provision of this subchapter, a district may be created by a resolution of the governing body of any authority created under the Joint County and Municipal Solid Waste Disposal Act, § 14-233-101 et seq., which includes a county having a population of at least sixty thousand (60,000) persons and which has made application to the Arkansas Department of Environmental Quality for a solid waste disposal permit on or before January 1, 1991.

(2) The creation of a district shall be effective upon the governing body of the authority notifying the director in writing. The governing body of a district created under this subsection shall be determined by the authority creating the district. The provisions of § 8-6-703 or any other section of this subchapter which provides for the method of selection of the governing body of a district shall not apply to districts formed under this subsection.

(c) The Arkansas Pollution Control and Ecology Commission shall have no authority to add to or otherwise change the boundaries of a district created under this section.

History. Acts 1991, No. 752, § 2.

8-6-724. Regional standards.

Regional solid waste management boards may adopt more restrictive standards for the location, design, construction, and maintenance of solid waste disposal sites and facilities than the state government or United States Government, provided such standards are based upon generally accepted scientific knowledge or engineering practices and are consistent with the purposes of this subchapter.

History. Acts 1995, No. 902, § 1.

CASE NOTES

Regulations.

The proper standard under this section for reviewing regulations is whether they are based upon generally accepted scientific knowledge or engineering practices,

rather than whether they are generally accepted in state or federal law. Four County Regional Solid Waste Mgt. Dist. Bd. v. Sunray Servs., Inc., 334 Ark. 118, 971 S.W.2d 255 (1998).

SUBCHAPTER 8 — BONDS BY REGIONAL SOLID WASTE MANAGEMENT DISTRICTS

SECTION.

- 8-6-801. Definitions.
- 8-6-802. Construction.
- 8-6-803. Pledge of rents, fees, and charges.
- 8-6-804. Bonds — Issuance, execution, and sale.
- 8-6-805. Bonds — Trust indenture.
- 8-6-806. Bonds — Default.
- 8-6-807. Bonds — Liability — Payment and security.
- 8-6-808. Refunding bonds — Issuance.

SECTION.

- 8-6-809. Pledge of rates, fees, and charges.
- 8-6-810. Rights of bondholders.
- 8-6-811. Bonds — Tax exemption.
- 8-6-812. Tax-exempt status of property and income of district.
- 8-6-813. Investment of public funds in bonds.
- 8-6-814. Transfer of facilities to district by county or municipality.

A.C.R.C. Notes. Acts 1991, No. 752, § 5, provided: “Any solid waste management system operating under the authority of § 14-233-101 et seq. with five (5) or more counties currently being served by these authorities upon the passage of this act shall, upon notification to the regional board and the Commission, shall be designated a regional solid waste management district. The governing body of the district shall be as determined by the authority by resolution.”

Cross References. Procedures and regulations, § 8-6-708.

Effective Dates. Acts 1991, No. 752, § 9: Mar. 26, 1991. Emergency clause provided: “It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that some areas

of the state are facing critical shortages of solid waste disposal capacity due to the difficulties in siting landfill facilities and the difficulties of financing public waste recovery and disposal facilities at the local level. It is found that regional solid waste authorities are needed to expedite the financing, siting, and operation of new waste management facilities in order that the health and welfare of the citizens of Arkansas be insured and that the state’s environment be protected. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 439, § 5: Feb. 24, 1995. Emergency clause provided: “It is hereby

found and determined by the General Assembly that the mandatory requirement that the Arkansas Development Finance Authority advise Solid Waste Management Districts and make a determination that the financing and project are financially feasible and advisable in connection with the issuance of Solid Waste Manage-

ment Bonds is unnecessary and constitutes an undue burden upon the issuance of such bonds. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

8-6-801. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Authority" means the Arkansas Development Finance Authority;

(2) "Board" means a regional solid waste management board created under § 8-6-701 et seq.;

(3) "Bonds" means bonds and any series of bonds authorized by and issued pursuant to the provisions of this subchapter and comprehends "revenue bonds", as defined in Arkansas Constitution, Amendment 65, § 3;

(4) "Costs" or "project costs" means, but shall not be limited to:

(A) All costs of acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any project, including the cost of studies, plans, specifications, surveys, and estimates of costs and revenues relating thereto;

(B) All costs of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing them;

(C) Administrative, organizational, legal, engineering, and inspection expenses;

(D) Financing fees, expenses, and costs, including, but not limited to, costs of credit enhancement or guaranties, trustees' fees, paying agents' fees or similar fees, and fees to financial advisors and other entities assisting in the issuance of bonds;

(E) Working capital;

(F) All machinery and equipment, including construction equipment;

(G) Interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the issuing or borrowing district;

(H) Establishment of reserves; and

(I) All other expenditures of the issuing or borrowing regional solid waste management district incidental, necessary, or convenient to

the acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any project and the placing of it in operation;

(5) "District" means a regional solid waste management district created under § 8-6-701 et seq.;

(6)(A) "Project" means any real property, personal property, or mixed property of any and every kind that can be used or will be useful in controlling, collecting, storing, removing, handling, reducing, disposing of, treating, and otherwise dealing in and concerning solid waste, including, without limitation, property that can be used or that will be useful in extracting, converting to steam, including the acquisition, handling, storage, and utilization of coal, lignite, or other fuel of any kind, or water that can be used or that will be useful in converting solid waste to steam, and distributing the steam to users thereof, or otherwise separating and preparing solid waste for reuse, or that can be used or will be useful in generating electric energy by the use of solid waste as a source of generating power and distributing the electric energy to purchasers or users thereof in accordance with the general laws of the state.

(B) However, for the purposes of this subchapter, not more than twenty-five percent (25%) of the fuel used to produce steam or electricity from any project shall consist of materials other than solid waste; and

(7) "Solid waste" means the same as provided in § 8-6-702.

History. Acts 1991, No. 752, § 4.

8-6-802. Construction.

(a) The powers provided by this subchapter shall be supplemental to all other powers conferred on regional solid waste management boards.

(b) Except as expressly provided in this subchapter, the acquisition, construction, reconstruction, enlargement, equipment, or operation and maintenance of projects under the provisions of this subchapter need not comply with the requirements of any other law applicable to the acquisition, construction, reconstruction, enlargement, equipment, and operation and maintenance of public works or facilities, including, without limitation, laws pertaining to public bidding, paying prevailing wages, transfer or exchange of title to real or personal property, or any other aspect of the acquiring, constructing, reconstructing, enlarging, equipping, or operation or maintenance of public works or public projects, or transfer or exchange of title to real or personal property, none of which laws shall be applicable to projects under this subchapter.

(c) This subchapter, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes of this subchapter.

History. Acts 1991, No. 752, § 4.

8-6-803. Pledge of rents, fees, and charges.

A regional solid waste management board may pledge any rents, fees, and charges imposed by the board to secure the repayment of bonds issued to finance projects, as provided for in this subchapter.

History. Acts 1991, No. 752, § 4.

8-6-804. Bonds — Issuance, execution, and sale.

(a) Regional solid waste management boards are authorized to use any available funds and revenues for the accomplishment of projects and may issue bonds, as authorized by this subchapter, for the purpose of paying project costs and accomplishing projects, either alone or together with other available funds and revenues.

(b)(1) The issuance of bonds shall be by resolution of the board.

(2) The bonds may be coupon bonds payable to bearer, subject to registration as to principal or as to principal and interest, or fully registered bonds without coupons, may contain exchange privileges, may be issued in one (1) or more series, may bear such date or dates, may mature at such time or times, not exceeding forty (40) years from their respective dates, may bear interest at such rate or rates, may be in such form, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption in advance of maturity at such prices, and may contain such terms, covenants, and conditions as the resolution may provide, including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the maintenance of various funds and reserves, the investing and reinvesting of any moneys during periods not needed for authorized purposes, the nature and extent of the security, the rights, duties, and obligations of the regional solid waste management district and the trustee for the holders or registered owners of the bonds, and the rights of the holders or registered owners of the bonds.

(c) There may be successive bond issues for the purpose of financing the same project, and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping projects already in existence, whether or not originally financed by bonds issued under this subchapter, with each successive issue to be authorized as provided by this subchapter. Priority between and among issues and successive issues as to security of the pledge of revenues and lien on the project involved may be controlled by the resolution authorizing the issuance of the bonds.

(d) Subject to the provisions of this subchapter pertaining to registration, the bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas.

(e) The bonds may be sold at public or private sale for such price, including, without limitation, sale at a discount, and in such manner as the board may determine by resolution.

(f) Bonds issued under this subchapter shall be executed by the manual or facsimile signatures of the chair and secretary of the board, but one (1) of such signatures must be manual. The coupons attached to the bonds may be executed by the facsimile signature of the chair of the board. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes. The seal of the board shall be placed or printed on each bond in such manner as the board shall determine.

(g)(1)(A) Prior to the issuance of any bonds pursuant to this subchapter, the district may seek the advice of the Arkansas Development Finance Authority as to the financial feasibility of the project to be financed, and, if so, shall provide the authority with such information and documentation as it may reasonably request in order to render that advice.

(B) In the event the district seeks the advice of the authority, the authority shall be entitled to reasonable compensation for its services as determined by the district and the authority.

(2) The district may request the authority to designate it as a developer, as contemplated by § 15-5-403, and hence, to guarantee the bonds on such terms and conditions as may be mutually agreed upon by the district and the authority, consistent with the program delineated in the Arkansas Development Finance Authority Bond Guaranty Act of 1985, § 15-5-401 et seq.

(3) The district may also request that the authority be the issuer of the bonds and loan the proceeds thereof to the district, secured by a pledge of revenues from the project on such terms as may be necessary to permit the sale of the bonds, consistent with the provisions hereof applicable to the issuance of bonds directly by districts.

(h) Boards are specifically authorized to apply for and receive loans from the Arkansas Natural Resources Commission to finance projects from the proceeds of the commission's bonds issued pursuant to the Arkansas Waste Disposal and Pollution Abatement Facilities Financing Act of 1987, § 15-22-701 et seq., on terms mutually acceptable to the borrowing board and the commission, including, but not limited to, provisions for a pledge of revenues to secure such loans, as set forth in § 8-6-803. The commission is authorized but not required to require, as a prerequisite to approving any such loan, that the borrowing board comply with some or all of the requirements of subsections (a) and (f) of this section and subdivisions (b)(1) and (g)(1) of this section. The commission is further authorized to enter into agreements with the authority for such services to the commission or to the borrowing boards as the commission deems necessary or desirable in furtherance of the commission's powers and duties under the Arkansas Waste Disposal and Pollution Abatement Facilities Financing Act of 1987, § 15-22-701 et seq., the authority granted hereby being in addition to those powers and not in derogation or restriction thereof.

History. Acts 1991, No. 752, § 4; 1995, No. 439, § 1.

8-6-805. Bonds — Trust indenture.

(a) The resolution authorizing the bonds may provide for the execution by the regional solid waste management district with a bank or trust company within or without this state of a trust indenture which defines the rights of the holders and registered owners of the bonds.

(b) The indenture may control the priority between and among successive issues and may contain any other terms, covenants, and conditions that are deemed desirable, including, without limitation, those pertaining to the custody and application of proceeds of the bonds, the maintaining of rates and charges, the collection and disposition of revenues, the maintenance of various funds and reserves, the nature and extent of the security and pledging of revenues, the rights, duties, and obligations of the district and the trustee for the holders or registered owners of the bonds, and the rights of the holders and registered owners of the bonds.

(c) The resolution or trust indenture authorizing or securing any bonds issued under this subchapter may or may not impose a foreclosable mortgage lien upon or security interest in the project financed in whole or in part with the proceeds of the bonds, and the nature and extent of the mortgage lien or security interest may be controlled by the resolution or trust indenture, including, without limitation, provisions pertaining to the release of all or part of the project properties from the mortgage lien or security interest and the priority of the mortgage lien or security interest in the event of the issuance of additional bonds.

(d) Subject to the terms, conditions, and restrictions which may be contained in the resolution or trust indenture, any holder or registered owner of bonds issued under this subchapter or of any coupon attached thereto may, either at law or in equity, enforce the mortgage lien or security interest and may, by proper suit, compel the performance of the duties of the members and employees of the regional solid waste management board as set forth in the resolution or trust indenture authorizing or securing the bonds.

History. Acts 1991, No. 752, § 4.

8-6-806. Bonds — Default.

(a)(1) In the event of a default in the payment of the principal of, premium on, if any, or interest on any bonds issued under this subchapter, any court having jurisdiction may appoint a receiver to take charge of all or any part of the project in which there is a mortgage lien or security interest securing the bonds in default.

(2) The receiver shall have the power and authority to operate and maintain the project, to charge and collect rates, payments, rents, and charges sufficient to provide for the payment of the principal of, premium on, if any, and interest on the bonds, after providing for the

payment of any costs of receivership and operating expenses of the project, and to apply the revenues derived from the project in conformity with this subchapter and the resolution or trust indenture authorizing or securing the bonds.

(3) When the default has been cured, the receivership shall be ended and the project returned to the regional solid waste management district.

(b) The relief afforded by this section shall be construed to be in addition and supplemental to the remedies that may be afforded the trustee for the bondholders and the bondholders in the resolution or trust indenture authorizing or securing the bonds and shall be so granted and administered as to accord full recognition to priority rights of bondholders as to the pledge of revenues from and the mortgage lien on and security interest in the project as specified in and fixed by the resolutions or trust indentures authorizing or securing successive bond issues.

History. Acts 1991, No. 752, § 4.

8-6-807. Bonds — Liability — Payment and security.

(a) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter and that the bonds are obligations only of the regional solid waste management district.

(b) No member of the regional solid waste management board shall be personally liable on the bonds or for any damages sustained by anyone in connection with any contracts entered into in carrying out the purpose and intent of this subchapter unless he or she shall have acted with corrupt intent.

(c) The principal of and interest on the bonds shall be payable from and may be secured by a pledge of revenues derived from the project acquired, constructed, reconstructed, equipped, extended, or improved, in whole or in part, with the proceeds of the bonds or obligations of the owners of projects.

History. Acts 1991, No. 752, § 4.

8-6-808. Refunding bonds — Issuance.

(a) Bonds may be issued for the purpose of refunding any bonds issued under this subchapter. Refunding bonds may be combined with bonds issued under the provisions of § 14-233-109 into a single issue.

(b) When refunding bonds are issued, they may either be sold or delivered in exchange for the bonds being refunded. If sold, the proceeds may either be applied to the payment of the bonds being refunded or deposited into escrow for the retirement thereof.

(c) All refunding bonds shall in all respects be issued and secured in the manner provided for other bonds issued under this subchapter and shall have all the attributes of those bonds.

(d) The resolution under which refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on and security interest in project revenues and the project as was enjoyed by the bonds refunded by them.

History. Acts 1991, No. 752, § 4.

8-6-809. Pledge of rates, fees, and charges.

(a) If the regional solid waste management board pledges rates, fees, and charges, then for as long as any bonds are outstanding and unpaid, the rates, fees, and charges shall be so fixed by the regional solid waste management district as to provide revenues sufficient:

(1) To pay all costs of and charges and expenses in connection with the proper operation and maintenance of its projects, and all necessary repairs, replacements, or renewals thereof;

(2) To pay when due the principal of, premium, if any, and interest on all bonds, including bonds subsequently issued for additional projects, payable from the revenues;

(3) To create and maintain reserves as may be required by any resolution or trust indenture authorizing or securing bonds; and

(4) To pay any and all amounts which the district may be obligated to pay from project revenues by law or contract.

(b)(1) Any pledge made by a district pursuant to this subchapter shall be valid and binding from the date the pledge is made.

(2)(A) The revenues so pledged and then held or thereafter received by the district or any fiduciary on its behalf shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act.

(B) The lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the district without regard to whether such parties have notice thereof.

(c) The resolution, trust indenture, or other instrument by which a pledge is created need not be filed or recorded in any manner.

History. Acts 1991, No. 752, § 4.

8-6-810. Rights of bondholders.

Any holder or registered owner of bonds or coupons pertaining to the bonds, except to the extent the rights given in this subchapter may be restricted by the resolution or trust indenture authorizing or securing the bonds and coupons, may, either at law or in equity, by suit, action, mandamus, or other proceeding protect and enforce any and all rights under the laws of the state or granted under this subchapter or, to the extent permitted by law, under the resolution or trust indenture authorizing or securing the bonds or under any agreement or other contract executed by a regional solid waste management district pursuant to this subchapter, and may enforce and compel the perfor-

mance of all duties required by this subchapter or by the resolution or trust indenture to be performed by any district, or by any officer of the foregoing, including the fixing, charging, and collecting of rates, fees, and charges.

History. Acts 1991, No. 752, § 4.

8-6-811. Bonds — Tax exemption.

Bonds issued under the provisions of this subchapter and the interest thereon shall be exempt from all state, county, and municipal taxes, including property, income, inheritance, and estate taxes. Provided, however, that nothing in this subchapter shall preclude a regional solid waste management district from requesting the Arkansas Development Finance Authority to issue taxable bonds in furtherance of the purposes of this subchapter, on such terms as the district and the authority deem advisable and in conformity with the authority's statutory authority for issuance of such taxable bonds.

History. Acts 1991, No. 752, § 4.

8-6-812. Tax-exempt status of property and income of district.

All properties at any time owned by the regional solid waste management district and the income therefrom shall be exempt from all taxation in the State of Arkansas.

History. Acts 1991, No. 752, § 4.

8-6-813. Investment of public funds in bonds.

(a) Any municipality or any board, commission, or other authority established by ordinance of any municipality or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any municipality or the board of trustees of any retirement system created by the General Assembly may, in its discretion, invest any of its funds not immediately needed for its purposes in bonds issued under the provisions of this subchapter.

(b) Bonds issued under the provisions of this subchapter shall be eligible to secure the deposit of public funds.

History. Acts 1991, No. 752, § 4.

8-6-814. Transfer of facilities to district by county or municipality.

Any municipality or county may acquire facilities for a project, or any portion thereof, including a project site, by gift, purchase, lease, or condemnation, and may transfer the facilities to the regional solid waste management district by sale, lease, or gift. The transfer may be authorized by ordinance of the governing body without regard to the

requirements, restrictions, limitations, or other provisions contained in any other law.

History. Acts 1991, No. 752, § 4.

SUBCHAPTER 9 — LICENSING OF OPERATORS OF SOLID WASTE MANAGEMENT FACILITIES

SECTION.

- 8-6-901. Definitions.
- 8-6-902. Penalties — Procedures.
- 8-6-903. Licenses required.
- 8-6-904. Licensing committee — Members — Compensation — Restrictions.

SECTION.

- 8-6-905. Powers and duties.
- 8-6-906. Classification of licenses.
- 8-6-907. Licensing.
- 8-6-908. Licensing — Eligibility — Reciprocity.
- 8-6-909. Fees.

Cross References. Agricultural operations, § 8-6-509.

Effective Dates. Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards

and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1999, No. 1508, § 19. Apr. 15, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that this act makes various technical corrections in the Arkansas Code; that this act further clarifies the law to provide that the Arkansas Code Revision Commission may correct errors resulting from enactments of prior sessions; and that this act should go into effect immediately in order to be applicable during the codification process of the enactments of this regular session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved

nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by

the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

8-6-901. Definitions.

As used in this subchapter:

(1) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(2) "Department" means the Arkansas Department of Environmental Quality;

(3) "Director" means the Director of the Arkansas Department of Environmental Quality or the director's delegate or representative;

(4) "Illegal dumps control officer" means an individual employed by an authorized solid waste management district within this state, a county government within this state, or a pollution control inspector or other representative of the department who is empowered to ensure compliance with any state law prohibiting the illegal dumping of solid wastes;

(5) "License" means a certificate of competency issued by the director to solid waste management facility operators and illegal dumps control officers who have met the requirements of the licensing program;

(6) "Licensing committee" means the committee of solid waste management facility managers, operators, or technicians established in this subchapter to assist and advise the commission and the department in the examining and licensing of operators of solid waste management facilities;

(7)(A) "Operator" means any person who performs operation of a solid waste management facility requiring individual judgment which may directly affect the proper operation of the solid waste management facility.

(B) "Operator" does not include an official solely exercising general administrative supervision;

(8) "Operator-in-training" means an employee of a solid waste management facility who has been issued an apprenticeship license by the director;

(9) "Provisional certificate" means a document issued to an operator by the director allowing an individual to operate at a facility while working to fulfill the licensing requirements;

(10)(A) "Recovered materials" means:

(i) Metal;

(ii) Paper;

(iii) Glass;

(iv) Plastic;

(v) Textiles;

(vi) Yard trimmings not destined for composting; or

(vii) Rubber materials which are not waste tires or waste tire residuals,

that have known recycling potential, can be feasibly recycled, and have been diverted and source-separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other but do not include materials destined for any use that constitutes disposal.

(B) “Recovered materials” are not solid waste;

(11) “Sanitary landfill” means any place for which a permit for disposal of solid waste on land is required under the provisions of this chapter;

(12)(A) “Solid waste disposal facility” means any place at which solid waste is dumped, abandoned, accepted, or disposed of for final disposition by incineration, landfilling, composting, or other method.

(B) Wastewater treatment plants permitted under the National Pollutant Discharge Elimination System and units at hazardous waste management facilities permitted under the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., and the Arkansas Hazardous Waste Management Code shall not be deemed to be disposal sites or facilities for the purpose of this subchapter; and

(13)(A) “Solid waste management facility” means all contiguous land and structures, other appurtenances, and improvements on the land used for storage, collection, transportation, processing, treatment, or disposal of solid waste.

(B)(i) For purposes of this subchapter, facilities engaged solely in the recycling of source-separated materials are excluded.

(ii) Also excluded are processes, operations, and facilities that are regulated pursuant to hazardous waste rules and regulations which are not regulated pursuant to solid waste rules and regulations.

History. Acts 1991, No. 750, § 1; 1995, 1164, § 75; 2005, No. 728, § 1; 2009, No. 165, § 1; 1995, No. 193, § 1; 1997, No. 1199, § 9.
1207, § 3; 1997, No. 1254, § 1; 1999, No.

8-6-902. Penalties — Procedures.

(a) Any person who violates any provision of this subchapter or of any rule, regulation, or order issued pursuant thereto, shall be subject to the same penalty and enforcement provisions as are contained in the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

(b) Except as otherwise provided in this subchapter, the procedure of the Arkansas Pollution Control and Ecology Commission for issuance of rules and regulations, conduct of hearings, notice, power of subpoena, review of action on permits, right of appeal, presumptions, finality of actions, and related matters shall be as provided in §§ 8-4-101 — 8-4-106 and 8-4-201 — 8-4-230 of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., including, without limitation, §§ 8-4-205, 8-4-210, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229.

(c) All rules and regulations adopted under this subchapter shall be reviewed by the House Committee on Public Health, Welfare, and

Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor.

History. Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1; 1997, No. 179, § 5.

8-6-903. Licenses required.

(a) It shall be illegal for any county, municipality, governmental subdivision, public or private corporation, or other person to operate a solid waste management facility unless the competency of the operator is duly licensed by the Director of the Arkansas Department of Environmental Quality under the provisions of this subchapter.

(b) It shall further be illegal for any person to perform the duties of an operator of any such solid waste management facility without being duly licensed under this subchapter.

(c)(1) With the advice and assistance of the licensing committee, the director may grant a written waiver from the requirements of this subchapter.

(2) The director may withdraw a written waiver under subdivision (c)(1) of this section for just cause by written notice to the county, municipality, governmental subdivision, public or private corporation, or other person to whom the written waiver was granted.

History. Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1; 2015, No. 937, § 1. **Amendments.** The 2015 amendment added (c).

8-6-904. Licensing committee — Members — Compensation — Restrictions.

(a)(1) There is created a licensing committee to advise and assist the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Environmental Quality in the administration of the licensing program.

(2) The committee shall be composed of ten (10) voting members as follows:

(A) Three (3) members, to be appointed by the commission, shall be solid waste management facility operators licensed by the department;

(B) One (1) member, to be appointed by the commission, shall be an employee of a county operating a solid waste management facility who holds the position of solid waste management facility on-site operator or supervisor;

(C) One (1) member, to be appointed by the commission, shall be an employee of a municipality operating a sanitary landfill who holds the position of landfill on-site operator or supervisor;

(D) One (1) member, to be appointed by the commission, shall be a representative of one (1) of the duly constituted regional solid waste management boards;

(E) One (1) member, to be appointed by the commission, shall be an on-site operator or supervisor of a waste tire processing facility;

(F) One (1) member, to be appointed by the commission, shall be an on-site operator or supervisor of a nonsegregated materials recovery, transfer, or composting facility;

(G) One (1) member, to be appointed by the commission, shall be a faculty member of or other qualified person associated with an accredited college, university, or professional school in this state whose major field is related to environmental education; and

(H) One (1) member, to be appointed by the Director of the Arkansas Department of Environmental Quality, shall be a qualified member of his or her staff who shall serve ex officio with no vote as executive secretary of the committee.

(b)(1) In the event of a vacancy, a new member shall be appointed by the commission to serve out the unexpired term.

(2)(A) As of August 12, 2006, no nonstate agency member shall serve more than two (2) consecutive three-year terms.

(B) Those members serving unexpired five-year terms may serve an additional one (1) consecutive three-year term.

(c) The committee shall select a member to serve as chair each year and shall meet as necessary to carry out its duties under this subchapter and at the call of the chair.

(d) State agency members of the committee shall receive no additional salary or per diem for their services as members of the committee, but they shall be allowed their travel and maintenance expenses while attending meetings away from Little Rock.

(e) No member of the committee shall participate in any licensing decision involving the firm or organization by which that member is employed or in which that member has a direct or indirect financial interest.

History. Acts 1991, No. 750, § 1; 1995, 250, § 47; 1997, No. 1254, § 2; 1999, No. 165, § 1; 1995, No. 193, § 1; 1997, No. 1508, § 7(c); 2005, No. 728, § 2.

8-6-905. Powers and duties.

(a) The Arkansas Pollution Control and Ecology Commission, with the advice and assistance of the licensing committee, is given and charged with the power and duty to adopt rules and regulations implementing and effectuating such powers and duties of the Arkansas Department of Environmental Quality and the committee under this subchapter as may be necessary for the administration and enforcement of this subchapter.

(b) The department is charged with the responsibility of administering and enforcing this subchapter, with the advice and assistance of the

committee, and is given and charged with the following powers and duties:

(1)(A) To conduct examinations for licensing, which shall be held at least annually and more frequently as the commission shall deem necessary.

(B) This duty may be delegated by the department to the administrator of any approved course;

(2) To issue licenses to qualified solid waste management facility operators and qualified illegal dumps control officers, to renew those licenses, to suspend or revoke the licenses for cause after due notice and opportunity for hearing, to issue one-year apprenticeship licenses to operators-in-training, and to issue provisional certificates; and

(3) To initiate enforcement actions or institute court proceedings, or both, to compel compliance with the provisions of this subchapter and rules and regulations issued under this subchapter.

(c) The committee shall:

(1) Conduct inquiries and establish findings necessary to advise the commission and the department on irregularities encountered in the management of the licensing program;

(2) Conduct inquiries and establish facts necessary to advise the commission and the department on the actions of licensees; and

(3) Recommend administrative sanctions, including, but not limited to, the suspension and revocation of licenses as necessary to promote the professional integrity of solid waste licensees.

History. Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1; 1997, No. 1207, § 4; 1997, No. 1254, § 3; 2005, No. 728, § 3.

A.C.R.C. Notes. Acts 1997, No. 1207, § 6, codified as § 8-6-510, provided:

“None of the provisions of this act are intended to supersede any of the reuse, recycling or fill provisions of state law or Regulation 22 of the Solid Waste Management Division of the Department of Pollution Control and Ecology.”

8-6-906. Classification of licenses.

(a) The Arkansas Pollution Control and Ecology Commission shall classify solid waste management facility operator licenses, taking into account the type and complexity of the solid waste management facility, the character and volume of waste managed, the skill, knowledge, and experience reasonably required to successfully operate the solid waste management facility, and such other factors as the commission shall deem appropriate.

(b) The Director of the Arkansas Department of Environmental Quality, with the advice and assistance of the licensing committee, shall license persons according to their qualifications to successfully operate solid waste management facilities within the classifications established and effectuated by rules and regulations promulgated by the commission.

History. Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1.

8-6-907. Licensing.

All operators in responsible charge of public and private solid waste management facilities shall be duly licensed and certified as competent by the Director of the Arkansas Department of Environmental Quality under the provisions of this subchapter and under such rules and regulations as the Arkansas Pollution Control and Ecology Commission may adopt, with the advice and assistance of the licensing committee, pursuant to the authority of this subchapter.

History. Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1.

8-6-908. Licensing — Eligibility — Reciprocity.

(a)(1) The Director of the Arkansas Department of Environmental Quality shall license and certify all applicants for licenses under this subchapter who satisfy the requirements of this subchapter and the rules and regulations issued pursuant thereto.

(2) Licenses shall be granted according to the classifications of operator licenses established in the rules and regulations promulgated by the Arkansas Pollution Control and Ecology Commission.

(3) Licenses shall be valid for a period of one (1) year and, with the exception of the apprenticeship license, shall be renewable upon application if the applicant meets the renewal requirements established by commission regulation. Provisional certificates shall be for a period of one (1) year, but may be extended if the director determines there is sufficient justification.

(b) All operators of solid waste management facilities within the state shall apply to the Arkansas Department of Environmental Quality for a license.

(c) The director may, at his or her discretion, waive the requirements or any part of the requirements for formal examination of an applicant for a license if the applicant holds a valid license or certificate from another state in which the requirements for a license in the appropriate classification are at least equal to the requirements set forth in this subchapter and the rules and regulations issued pursuant thereto.

(d) The director shall issue an apprenticeship license to operators-in-training as established under this subchapter and in rules and regulations promulgated by the commission.

(e) The director may issue, at his or her discretion, a provisional certificate to any operator for just cause as established under this subchapter and in rules and regulations promulgated by the commission.

History. Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1; 1997, No. 1254, § 4.

8-6-909. Fees.

(a) The Arkansas Pollution Control and Ecology Commission shall have the authority to set fees in an amount to cover the cost of the administration of this subchapter. These fees to be assessed per classification of certification shall not exceed fifty dollars (\$50.00) for the initial cost of examination and license, fifty dollars (\$50.00) for the cost of reciprocity review and license, twenty-five dollars (\$25.00) for annual license renewal, twenty-five dollars (\$25.00) for provisional certificates, and a ten-dollar penalty for late renewal.

(b) All of the fees shall be deposited into the Arkansas Department of Environmental Quality Fee Trust Fund, as established in § 8-1-105.

History. Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1; 1997, No. 1254, § 5; 1999, No. 1164, § 76.

SUBCHAPTER 10 — LANDFILL POST-CLOSURE TRUST FUND

SECTION.

8-6-1001. Definitions.

8-6-1002. Creation.

8-6-1003. Landfill disposal fees.

SECTION.

8-6-1004. Collection of fees.

8-6-1005. Penalties.

Publisher's Notes. Acts 1993, No. 1127, § 1 provided: "The Arkansas General Assembly makes the following findings:

"(1) Arkansas Act 747 of 1991 (codified at Ark. Code Ann. § 8-6-1001 et seq. (Supp. 1991)) created the 'Landfill Post-Closure Trust Fund' and imposed additional landfill disposal fees for that purpose.

"(2) Arkansas Act 754 of 1991 (codified at Ark. Code Ann. § 8-6-606 (Supp. 1991)) amended Ark. Code Ann. § 8-6-606 to increase the landfill disposal fees under the Solid Waste Management Recycling Fund Act. The landfill disposal fees under the Solid Waste Management Recycling Fund had previously been established by Arkansas Act 849 of 1989 and Arkansas Act 934 of 1989.

"(3) The General Assembly has learned that in many areas of the state, residents and businesses are having their solid waste transported to and disposed of at landfill disposal sites in other states. By doing so, these residents and businesses are avoiding paying their share of taxes referenced above, as would ordinarily be passed on to the solid waste generator. By such transportation and disposal of solid

waste in other states, this state is losing much needed revenues. Further, by requiring the payment of such fees on solid wastes disposed of within the state, but not on solid wastes generated within this state and transported to and disposed of in other states, the existing fee structure under the above-referenced law unfairly burdens landfill disposal entities within the state since they are required to pay said fees causing them to charge higher rates than their out of state competitors which do not have to pay such fees.

"(4) In order to remedy the present situation, it is the finding of the Arkansas General Assembly that similar fees need to be assessed on all solid waste transported in Arkansas but disposed of outside the state. By doing so, the avoidance of landfill disposal fees by the transfer of solid waste out of state will be remedied and the current unfair burden on in-state landfill disposal entities will be alleviated."

Effective Dates. Acts 1993, No. 1127, § 7: Apr. 13, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that some areas of the state are facing critical shortages of solid waste disposal capacity due to the

difficulties in siting landfill facilities at the local level. It is found that the authority granted to municipalities and counties to adopt more restrictive standards for the location, design, construction, and maintenance of solid waste disposal sites and facilities than those adopted by the federal, state and regional laws, rules, regulations, and orders, has exacerbated and attenuated this crises and could thwart or jeopardize the purposes of Arkansas Act 752 of 1991 and its efforts to protect the public health and the state's environmental quality by establishing regional solid waste management and planning. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 938, § 9: July 1, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the fiscal year begins on July 1, and that this emergency clause is necessary in order that uniformity can be achieved at the beginning of the 1997-1998 fiscal year for money deposited into the Landfill Post-Closure Trust Fund and the moneys allocated from that fund for the Illegal Dump Eradication and Corrective Action Program. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1997."

Acts 1999, No. 1210, § 10: July 1, 1999. Emergency clause provided: "It is hereby

found and determined by the Eighty-second General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1999 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1999 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1999."

Acts 2015, No. 1037, § 2: Apr. 4, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that funds from the Landfill Post-Closure Trust Fund will alleviate problems in waste tire facility closures due to lack of funds; and that this act is immediately necessary because delays in waste tire facility closure pose a danger to the public health and safety. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

8-6-1001. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(2) “Department” means the Arkansas Department of Environmental Quality;

(3) “Director” means the Director of the Arkansas Department of Environmental Quality;

(4) “Landfill” means a landfill permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq., except a landfill where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry or wastes of a similar kind or character;

(5) “Permittee” means any person holding a solid waste disposal permit as provided in the Arkansas Solid Waste Management Act, § 8-6-201 et seq.;

(6) “Post-closure corrective action” means any measures deemed necessary by the director to prevent or abate contamination of the environment from any landfill which has been certified as properly closed by the department;

(7) “Solid waste” means any garbage or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. § 1342 or source material, special nuclear material, or by-product material as defined by the Atomic Energy Act of 1954, Pub. L. No. 83-703;

(8) “Solid waste disposal permit” means a permit issued by the State of Arkansas under the provisions of the Arkansas Solid Waste Management Act, § 8-6-201 et seq., for the construction and operation of a landfill waste disposal facility; and

(9) “Transporter” or “solid waste transporter” means any individual, corporation, company, firm, partnership, association, trust, local solid waste authority, institution, county, city, town, or municipal authority or trust, venture, or other legal entity transporting solid waste within the state that is to be disposed of outside of the state.

History. Acts 1991, No. 747, § 1; 1993, No. 1127, § 2; 1995, No. 511, § 3; 1999, No. 1164, § 77.

U.S. Code. The Atomic Energy Act of 1954, referred to in this section, is codified primarily as 42 U.S.C. § 2011 et seq.

8-6-1002. Creation.

(a)(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the “Landfill Post-Closure Trust Fund”.

(2) In addition to all moneys appropriated by the General Assembly to the fund, there shall be deposited into the fund all landfill disposal fees collected pursuant to this subchapter and any moneys received by

the state as a gift or donation to the fund or any federal moneys designated to enter the fund and all interest earned upon moneys deposited into the fund.

(3) Moneys received into the fund may also be used by the Arkansas Department of Environmental Quality for administrative purposes at a level not to exceed three hundred thousand dollars (\$300,000) annually with an annual escalator not to exceed three percent (3%).

(b)(1) The fund shall be administered by the department, which shall authorize funding and administrative expenditures from the fund according to the provisions of this subchapter.

(2)(A) The fund shall be administered by the department and shall be used by the department for landfill post-closure corrective action.

(B) The fund shall be used only if the Director of the Arkansas Department of Environmental Quality determines that:

(i) A landfill which is no longer receiving waste, regardless of when it ceased operating, is causing groundwater contamination or is causing other contamination that is a hazard to public health or endangers the environment; and

(ii) The owner or operator of the landfill site has expended at least ten thousand dollars (\$10,000) toward corrective action, unless the owner or operator cannot be located or the director determines an emergency exists necessitating immediate corrective action.

(3) The fund shall be administered by the department and may be used by the department to complete all activities necessary for the closure of a permitted waste tire processing or disposal site that is owned or operated by a regional solid waste management district if the department determines that the district lacks sufficient funds to complete closure of the permitted waste tire processing or disposal site.

(c) The fund shall not be used to compensate third parties for damages to property caused by the contamination.

(d) For the purposes of this subchapter only, closed areas or operational phases contiguous to any permitted landfill which is receiving solid waste when the director determines that corrective action is necessary are not eligible for funding as contemplated by this subchapter.

(e)(1) An owner or operator of a permitted landfill shall establish and at all times maintain financial assurance for the post-closure maintenance of the landfill. At a minimum, each owner or operator shall provide no less than twenty percent (20%) of estimated post-closure maintenance costs through a financial mechanism readily negotiable by the department to cash funds, for example, a letter of credit, surety bond, irrevocable trust, insurance, or other mechanism approved by the department, upon default by the owner and operator of post-closure obligations.

(2) If, after proper closure of a landfill, the department reasonably determines that the owner or operator cannot be located or cannot otherwise satisfy, in whole or part, post-closure maintenance obligations, the department is authorized to expend the necessary funds from

the fund to satisfy the requirements of state and federal law and to prevent or abate releases to the environment.

(3) If the department is required to expend funds from the fund due to the failure of an owner or operator to meet the requirements of this subsection, the department shall pursue collection and recovery of the funds by issuing an administrative order notifying the owner or operator by certified mail at the last known address of the owner or operator of the action taken by the department and the amount of funds expended from the fund and that the administrative order may be appealed in accordance with the department's regulations.

History. Acts 1991, No. 747, § 1; 1993, No. 1127, § 2; 1995, No. 511, § 4; 1997, No. 938, §§ 2, 3; 1999, No. 1210, § 2; 2005, No. 1962, § 18; 2015, No. 1037, § 1; 2017, No. 624, § 7.

Amendments. The 2015 amendment added (b)(3).

The 2017 amendment redesignated former (a)(3)(A) as (a)(3) and deleted (a)(3)(B).

Cross References. Landfill Post-Closure Trust Fund, § 19-5-979.

8-6-1003. Landfill disposal fees.

(a)(1) In addition to any other fee provided by law, there is imposed on each landfill permittee a landfill disposal fee of fifteen cents (15¢) for each uncompacted cubic yard of solid waste and thirty cents (30¢) for each compacted cubic yard of solid waste received at the landfill.

(2) If a landfill permittee is required or chooses to operate on a weight basis, the landfill disposal fee shall be one dollar (\$1.00) for each one (1) ton (2,000 lbs.) of solid waste received at the landfill.

(b) The landfill permittee referenced in subsection (a) of this section shall use the weight basis in determining the fee for the disposal or transportation of ash.

(c) Solid waste collected during the annual Keep Arkansas Beautiful and Keep America Beautiful campaigns that are sponsored by the Keep Arkansas Beautiful Commission is exempt from the landfill disposal fee under this section.

History. Acts 1991, No. 747, § 1; 1993, No. 1127, § 2; 1997, No. 374, § 1; 2001, No. 217, § 3; 2009, No. 189, § 5.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Environmental Law, 24 U. Ark. Little Rock L. Rev. 475.

8-6-1004. Collection of fees.

Fees imposed pursuant to the provisions of this subchapter shall be collected as follows:

(1) Each landfill permittee and each solid waste transporter shall submit to the Arkansas Department of Environmental Quality on or before January 15, April 15, July 15, and October 15 of each year a

quarterly report which accurately states the total weight or volume of solid waste received at the landfill or transported out of state during the previous quarter;

(2) On or before January 15, April 15, July 15, and October 15 of each year, each landfill permittee and solid waste transporter shall pay to the department the full amount of such disposal fees due for the previous quarter; and

(3) The disposal and transportation fees collected pursuant to this section shall be special revenues and shall be deposited into the State Treasury to the credit of the Landfill Post-Closure Trust Fund.

History. Acts 1991, No. 747, § 1; 1993, No. 1127, § 2; 1995, No. 511, § 5.

8-6-1005. Penalties.

Failure of the permittee or solid waste transporter to pay the fees assessed by the Arkansas Department of Environmental Quality shall provide grounds for administrative or civil enforcement action. Sanctions may include civil penalties as provided in the Arkansas Solid Waste Management Act, § 8-6-201 et seq., or the revocation of the solid waste disposal or solid waste transporter permit.

History. Acts 1991, No. 747, § 1; 1993, No. 1127, § 2.

SUBCHAPTER 11 — LANDFILL SERVICE AREAS

SECTION.

8-6-1101. Findings.

8-6-1102. Purpose — Construction.

8-6-1103. Definitions.

8-6-1104. Transportation of solid waste outside district.

SECTION.

8-6-1105. Expansion outside district — Exemption.

Publisher's Notes. Acts 1989, No. 870 and Acts 1991, No. 319 were held to be unconstitutional as applied to solid wastes originating outside the State of Arkansas in *Southeast Ark. Landfill, Inc. v. Arkansas Dep't of Pollution Control and Ecology*, 981 F.2d 372 (8th Cir. 1992).

Effective Dates. Acts 1991, No. 319, § 9: Mar. 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that some areas of the state are facing serious shortages of solid waste landfill capacity to the point of crisis; additional time is needed to develop regional solid waste management and planning and to increase the landfill capacity in the state to a level sufficient for

the future needs of the state; and in order to address the serious financial and environmental problems, temporary restrictions should be placed on the expansion of landfill service areas. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 619, § 8: Mar. 22, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that expediting the transfer of solid waste between solid waste management districts will significantly benefit the districts, the citizens of Arkansas, and the environment; and this

act is necessary for the immediate preservation of the public peace, health and safety; therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

RESEARCH REFERENCES

Ark. L. Rev. Note, In re Southeast Arkansas Landfill and the Commerce Clause: Welcome to the Arkansas Depository for Solid Waste, 46 Ark. L. Rev. 1027.

U. Ark. Little Rock L.J. Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

CASE NOTES

Constitutionality.
Those portions of Act 870 of 1989 and Act 319 of 1991 which discriminate on their face against solid waste originating outside the State of Arkansas violate the Commerce Clause (U.S. Const., Art. 1, § 8) and are thus unconstitutional. *Southeast Ark. Landfill, Inc. v. Ark. Dep’t of Pollution Control & Ecology*, 981 F.2d 372 (8th Cir. 1992).

8-6-1101. Findings.

- The General Assembly makes the following findings:
- (1) As of July 30, 1990, the landfill capacity in Arkansas stood at about four and three-tenths (4.3) years of landfill life for sixty-three (63) municipal solid waste landfills;

(2) The present landfill capacity in the State of Arkansas is inadequate, and a landfill capacity of at least ten (10) years should be developed for solid waste generated in this state in order to provide sufficient protection for the public health, welfare, and safety and to provide for the future development of the state;

(3) Adequate solid waste management planning has not been possible because of the lack of accurate statistics on industrial waste generation, landfill capacity, and use;

(4) Legislation has been introduced in this session of the General Assembly to:

(A) Require better reporting by industries using landfills;

(B) Assist the development of adequate landfill capacity through regional funding and grants; and

(C) Lengthen the usable life of existing landfills through recycling; and

(5) Temporary restrictions on the disposal of out-of-district solid waste should be imposed for the purpose of:

(A) Providing additional time for districts to obtain information necessary for regional planning;

(B) Encouraging districts to develop regional solid waste management solutions; and

(C) Developing a statewide and district landfill capacity of at least ten (10) years.

History. Acts 1991, No. 319, § 1.

A.C.R.C. Notes. The references to “districts” in this section originally referred to regional solid waste planning districts

and solid waste service areas. These entities were renamed as “regional solid waste management districts”. See § 8-6-703.

8-6-1102. Purpose — Construction.

(a) As directed by Acts 1989, No. 870, the Arkansas Solid Waste Fact Finding Task Force [expired] has presented its findings and proposals. The task force report identifies serious and chronic deficiencies in how solid waste is managed in this state. The report is accompanied by legislative proposals which reaffirm the state’s commitment to regional solid waste management embodied in Acts 1989, No. 870, and aim, through extensive revision of current law, to make regionalization a reality. The report and the task force’s legislative proposals demonstrate that the state does not have sufficient understanding or control of the overall solid waste stream to realize its goal of regional solid waste management, much less a responsible recycling and source reduction program. These goals cannot be attained if the waste streams assigned to the respective regional solid waste planning districts continue to change during the crucial planning and development stages.

(b) Federal law, 42 U.S.C. § 6941 et seq., has placed the burden of implementing regional solid waste management strategies upon the states. To this end, the General Assembly has embarked upon the difficult task of addressing the complex solid waste needs of the state on a regional basis. After giving due regard to all of the contingencies and exigencies inherent in planning a regional solid waste strategy, and after accommodating existing business expectations based upon waste streams originating from outside the Acts 1989, No. 870, regional solid waste planning districts, the General Assembly hereby enacts the following emergency measure as an essential component of its efforts to reform solid waste management in Arkansas.

(c) This subchapter should be given a liberal construction so as to effectuate its remedial intent.

History. Acts 1991, No. 319, § 2.

A.C.R.C. Notes. The Arkansas Solid Waste Fact Finding Task Force, referred to in this section, was terminated upon the delivery of its final report to the General Assembly, which was due on or before January 1, 1991. See Acts 1989, No. 870, § 12.

Regional solid waste planning districts, referred to in this section, were renamed as “regional solid waste management districts”. See § 8-6-703.

Publisher’s Notes. Acts 1989, No. 870, referred to in this section is codified as § 8-6-701 et seq.

8-6-1103. Definitions.

As used in this subchapter:

(1) “Board” means a regional solid waste management board established pursuant to § 8-6-701 et seq., or a successor board to the powers of the board;

(2) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(3) "Director" means the Director of the Arkansas Department of Environmental Quality;

(4) "District" means a regional solid waste management district as established by § 8-6-701 et seq., or a successor district of a regional solid waste management district;

(5) "Landfill" means a permitted landfill under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.; and

(6) "Solid waste" means the same as provided by § 8-6-702.

History. Acts 1991, No. 319, § 3; 1999, No. 1164, § 78.

A.C.R.C. Notes. Acts 1991, No. 319, § 3, defined "board" as a "regional solid waste planning board or a solid waste service area board" and "district" as a

"regional solid waste planning district or a solid waste services area". However, these entities have been renamed as "regional solid waste management boards" and "regional solid waste management districts". See § 8-6-703.

8-6-1104. Transportation of solid waste outside district.

In any instance in which a landfill has a useful life of less than one and one-half (1½) years, the Director of the Arkansas Department of Environmental Quality may authorize any city utilizing that landfill to transport solid waste outside the boundaries of the regional solid waste management district. Provided, however, in no instance shall that authority be extended after a landfill with a useful life in excess of one and one-half (1½) years becomes available within the district for accepting the solid waste of the city.

History. Acts 1991, No. 319, § 5; 1999, No. 1164, § 79.

8-6-1105. Expansion outside district — Exemption.

(a) This section shall apply until the later of:

(1) July 1, 1992; or

(2) Until the capacity of landfills in both the regional solid waste management district and the state reach a ten-year capacity.

(b) Landfill capacity shall be determined by the Director of the Arkansas Department of Environmental Quality.

(c)(1) No existing landfill shall expand its service area outside the district in which it is located, except that existing landfills that on March 1, 1989, do not serve areas outside their respective districts shall not accept more than fifty (50) tons per day of solid waste originating from outside their districts.

(2) Existing landfills that on March 1, 1989, serve areas outside of their respective districts shall not increase the total amount of solid waste originating from outside their districts by more than twenty percent (20%) annually of the total volume of solid waste received at the facility from outside their districts. The amount of solid waste shall be determined by weight.

(3) No new landfill shall be allowed to receive solid waste outside the boundaries of the district in which it is located unless it is a landfill where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry or of wastes of a similar kind or character and such industry has commenced, prior to March 1, 1991, the process for obtaining a permit by issuing notice to the local government having jurisdiction, as required under the rules and regulations of the Arkansas Department of Environmental Quality.

(4)(A) No new applications for landfill permits seeking to dispose of solid waste originating outside of a district or that propose to dispose of solid waste originating from outside such district shall be accepted or processed by the Arkansas Pollution Control and Ecology Commission or a regional solid waste management board, unless such applications were pending before the department on March 1, 1989.

(B) Provided, the prohibition contained in this subsection shall not apply to new applications for landfill permits if the landfill is one where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry, or of wastes of a similar kind or character, and such industry has commenced, prior to March 1, 1991, the process for obtaining a permit by issuing notice to the local government having jurisdiction, as required under the rules and regulations of the department.

(d) The director may grant an exemption from this section for solid waste brought into a district for the purpose of recycling or because the district where solid waste is generated does not have a landfill that meets applicable state or federal regulations. The exemption shall be subject to such terms and conditions as the director may deem appropriate.

(e) A successor district may transport solid waste to any one (1) of the original districts of which the members of the successor district were a part.

History. Acts 1991, No. 319, § 4; 1993, No. 619, § 4; 1999, No. 1164, § 80.

SUBCHAPTER 12 — DISPOSAL OF INCINERATOR ASH AND PETROLEUM-CONTAMINATED SOILS

SECTION.	SECTION.
8-6-1201. Legislative intent.	Petroleum-contaminated
8-6-1202. Exceptions.	soils.
8-6-1203. Definitions.	8-6-1206. Adoption of disposal criteria —
8-6-1204. Powers and duties.	Incinerator ash.
8-6-1205. Adoption of disposal criteria —	8-6-1207. Penalties.

Effective Dates. Acts 1991, No. 1183, § 11: Apr. 10, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the regulation of potentially harmful materials, specifically incinerator ash and petroleum contaminated soils, is essential to the protection and preservation of the public health and the environment. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1992 (1st Ex. Sess.), No. 48, § 6: Mar. 17, 1992. Emergency clause provided: "It is hereby found and determined

by the Seventy-Eighth General Assembly of the State of Arkansas meeting in the First Extraordinary Session of 1992 that incinerator ash and petroleum contaminated soils disposed of in landfills are potentially harmful materials to the environment of the State of Arkansas and thereby their regulation are essential to the preservation and protection of the environment and ecology of the State of Arkansas. Therefore, in order to more effectively regulate these environmental hazards, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

8-6-1201. Legislative intent.

The purpose of this subchapter is to protect the public health and the state's environmental quality by establishing standards and promulgating regulations by the Arkansas Pollution Control and Ecology Commission for the disposal of potentially harmful materials, specifically incinerator ash and petroleum-contaminated soils in a permitted landfill.

History. Acts 1991, No. 1183, § 1.

8-6-1202. Exceptions.

The provisions of this subchapter shall not apply to persons who produce incinerator ash with an input capacity of twelve (12) tons of materials or less per day or to a manufacturing facility which utilizes solid waste generated on the premises of that manufacturing facility in incinerators, boilers, or industrial furnaces.

History. Acts 1991, No. 1183, § 4; 1992 (1st Ex. Sess.), No. 48, § 1.

8-6-1203. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "Incinerator ash" means any tangible residue resulting from the incineration of solid waste;
- (2) "Monofill" means a waste disposal facility specifically designed for the sole disposal of incinerator ash;
- (3) "Person" means any state agency, municipality, governmental subdivision of the state or the United States, public or private corporation, individual, partnership, association, or other entity; and

(4) "Petroleum-contaminated soils" means those soils which have been physically, chemically, or biologically altered by gasoline, diesel, kerosene, heating oil, jet fuel, or any other petroleum product.

History. Acts 1991, No. 1183, § 2.

8-6-1204. Powers and duties.

The Arkansas Pollution Control and Ecology Commission shall have the following powers and duties:

- (1) To adopt rules and regulations to meet the purposes of this subchapter;
- (2) To adopt specific design and operational criteria for the operation of a monofill;
- (3) To adopt criteria for the disposal of petroleum-contaminated soils in landfills; and
- (4) To administer and enforce all laws, rules, and regulations relating to this subchapter.

History. Acts 1991, No. 1183, § 3.

8-6-1205. Adoption of disposal criteria — Petroleum-contaminated soils.

(a)(1) Within eighteen (18) months after the date of enactment of this subchapter, the Arkansas Pollution Control and Ecology Commission shall, after consultation with the Advisory Committee on Petroleum Storage Tanks, adopt criteria for the disposal of petroleum-contaminated soils in landfills that are permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

(2) In adopting such criteria, the commission shall follow the procedures applicable to the adoption of rules and regulations under § 8-4-202(a).

(b) The criteria adopted by the commission shall:

- (1) Define the characteristics of the petroleum-contaminated soils that can be disposed of in permitted landfills;
- (2) Define the characteristics of landfills suitable for receipt of petroleum-contaminated soils;
- (3) Assure, to the extent practicable, that reasonable landfill capacity is available for disposal of petroleum-contaminated soils;
- (4) Consider the financial impact of such criteria on small businesses which need to dispose of petroleum-contaminated soils;
- (5) Consider whether affordable alternatives are available for the treatment or disposal of petroleum-contaminated soils; and
- (6) Be protective of public health and the environment.

(c) The criteria adopted by the commission shall include a description of appropriate methods for collecting samples and conducting analyses of petroleum-contaminated soils that may be disposed of in permitted landfills to assure the representativeness of the soil mass.

History. Acts 1991, No. 1183, § 5. ter,” Acts 1991, No. 1183, became effective on April 10, 1991.
Publisher’s Notes. In reference to the term “date of enactment of this subchap-

8-6-1206. Adoption of disposal criteria — Incinerator ash.

(a)(1) On or before July 1, 1992, the Arkansas Pollution Control and Ecology Commission shall adopt criteria for the disposal of incinerator ash in landfills that are permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

(2) In adopting such criteria, the commission shall follow the procedures applicable to the adoption of rules and regulations under § 8-4-202(a).

(b) The criteria adopted by the commission shall include, but not be limited to, the monofilling of incinerator ash.

(c)(1) The monofill requirement created under this subchapter does not apply if the owner or operator demonstrates to the Arkansas Department of Environmental Quality that the incinerator ash to be disposed of in the Class 1 landfill is received from incinerators that only combust yard waste or other natural vegetative debris, including vegetative storm debris, tree trimmings, and land-clearing debris.

(2) All other requirements adopted under this subchapter apply to the disposal of incinerator ash described in this subsection.

(3) As used in this subsection, “other natural vegetative debris” does not include any solid waste that can be classified as industrial, commercial, or construction and demolition waste.

History. Acts 1991, No. 1183, § 6; 1992 (1st Ex. Sess.), No. 48, § 2; 2011, No. 342, § 1.

8-6-1207. Penalties.

Any person who violates the provisions of this subchapter shall be subject to the civil penalties prescribed in § 8-6-204.

History. Acts 1991, No. 1183, § 7.

SUBCHAPTER 13 — COMMERCIAL MEDICAL WASTE INCINERATION FACILITIES

SECTION.

- 8-6-1301. Legislative findings and purpose.
- 8-6-1302. Definitions.
- 8-6-1303. Construction.
- 8-6-1304. Applicability.

SECTION.

- 8-6-1305. Permits — Procedure generally — Definition.
- 8-6-1306. Permits — Limitations.
- 8-6-1307. Financial assurance guarantees.

Effective Dates. Acts 1992 (1st Ex. Sess.), No. 75, § 11: Mar. 20, 1992. Emergency clause provided: “It is hereby found and determined by the Seventy-Eighth General Assembly that the issuance of commercial medical waste incineration permits will have a significant impact on the citizens and environment of the State

of Arkansas; that the Environmental Protection Agency is expected to issue rules and regulations pertaining to commercial medical waste incineration facilities in September of 1993; that it is necessary to delay the issuance of those permits until these federal regulations have been promulgated; that sufficient notification to the public of permit applications is necessary to protect the public interest; and that certain regulations governing the location of commercial medical waste incineration facilities are necessary to protect the public health and welfare. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 496, § 12: Mar. 1, 1995. Emergency clause provided: "The General Assembly finds that both scientific understanding of the effects of medical waste incineration and the regulatory mechanisms for assuring safe operations are in a state of flux. The General Assembly deems this Act necessary to assure that commercial medical waste incineration facilities are sited and operated in accordance with the latest applicable laws and regulations, and that the operators of such facilities have the financial means necessary to maintain safe operations. Therefore, an emergency is hereby declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Environmental Law, 16 U. Ark. Little Rock L.J. 111.

8-6-1301. Legislative findings and purpose.

(a) The General Assembly has found that there is an increased interest in obtaining permits from the Arkansas Department of Environmental Quality for the purpose of constructing and operating commercial medical waste incineration facilities. The Clean Air Act in 42 U.S.C. § 7429(a)(1)(C) has directed the United States Environmental Protection Agency to promulgate regulations concerning these commercial medical waste incineration facilities. The General Assembly has determined that it is necessary to delay the issuance of permits to these commercial medical waste incineration facilities until those regulations are promulgated in order to ensure that any permits issued will be based on the latest available information concerning technology and safety as set forth in the federal regulations.

(b) As scientific understanding of the potential public health and environmental impacts from large-scale medical waste incineration evolves, the General Assembly finds that continued caution regarding the development of commercial medical waste incineration facilities is necessary in order to protect the public health, safety, and welfare. Even though medical waste incinerators constitute major sources of potentially harmful emissions into the air, the United States Environmental Protection Agency has yet to promulgate technology standards necessary to assure safe operation. In the meantime, highly speculative ventures seek to profit from the regulatory uncertainty by promoting

undercapitalized incineration facilities handling volumes of waste far in excess of that from the largest hospital.

(c) This subchapter seeks to protect the public welfare by assuring that:

(1) Commercial-scale medical waste incinerators beginning operation after March 1, 1995, will be in compliance with the most recent operating standards and regulations;

(2) The owner or operator of any commercial-scale medical waste incinerator beginning operation after March 1, 1995, shall demonstrate financial assurances necessary to ensure the proper operation, maintenance, and closure of such facilities;

(3) A transfer of ownership or control of any commercial-scale medical waste incinerator will prompt regulatory officials to apply permitting standards and procedures as stringent as those applicable for the issuance of a new permit;

(4) Generators of medical waste are encouraged to follow the hierarchy of waste management goals set out in the Arkansas Pollution Prevention Act, § 8-10-201 et seq.; and

(5) Both generators of medical waste and regulatory officials will give proper consideration to alternative technologies for treating medical waste other than incineration.

History. Acts 1992 (1st Ex. Sess.), No. 75, § 1; 1995, No. 496, § 1; 1999, No. 1164, § 81.

8-6-1302. Definitions.

As used in this subchapter:

(1) “Commercial medical waste incineration facility” means any facility accepting medical waste materials for treatment and disposal by incineration from an off-site source and operating the treatment and disposal facility as a business for profit;

(2) “Department” means the Arkansas Department of Environmental Quality;

(3) “Director” means the Director of the Arkansas Department of Environmental Quality;

(4) “Occupied structure” means a building or other structure:

(A) Where any person lives or carries on a business or other calling;

(B) Where people assemble for purposes of business, government, education, religion, entertainment, or public transportation;

(C) Which is customarily used for overnight accommodation of persons whether or not a person is actually present. Each unit of a structure divided into separate units designed for occupancy is itself an occupied structure; or

(D) Which has not yet been constructed or completed but for which a building permit, where applicable, has been issued and is valid on the date the application for the permit to construct and operate a commercial medical waste incineration facility is filed; and

(5) “Person” means any individual or legal entity.

History. Acts 1992 (1st Ex. Sess.), No. § 1; 1995, No. 496, § 7; 1999, No. 1164, § 2; 1993, No. 491, § 1; 1993, No. 861, § 82.

8-6-1303. Construction.

(a) Nothing in this subchapter shall be construed to affect the authority of cities and counties to enact zoning regulations or procedures that control the location of medical waste facilities or sites.

(b) This subchapter shall be liberally construed so as to achieve remedial intent.

History. Acts 1992 (1st Ex. Sess.), No. 75, § 6; 1995, No. 496, § 1.

8-6-1304. Applicability.

(a) This subchapter shall not apply to medical waste incineration facilities constructed and operating before March 20, 1992, or to medical waste incineration facilities operated by healthcare facilities for the purpose of disposing of medical waste.

(b) This subchapter shall not apply to permits for renovations to medical waste incineration facilities constructed and operating before March 20, 1992, either through modification or additional construction, provided that such renovations are for the purpose of:

(1) Complying with the regulations or standards imposed by local, state, or United States Government agencies; or

(2) Adding additional waste disposal capacity to a medical waste incineration facility constructed and operating before March 20, 1992.

(c)(1) The requirements of this subchapter shall apply to any commercial medical waste incineration facility that has not initiated operation prior to March 1, 1995.

(2) For the purposes of construing this subsection and the application of this subchapter, initiation of operations has not occurred until the Arkansas Department of Environmental Quality has approved the installation of all permitted pollution control equipment and the commercial medical waste incineration facility is receiving medical waste for incineration.

History. Acts 1992 (1st Ex. Sess.), No. 75, § 7; 1995, No. 496, §§ 2, 3.

8-6-1305. Permits — Procedure generally — Definition.

(a) The Arkansas Department of Environmental Quality shall not accept any applications or issue any permits for the construction or operation of any commercial medical waste incineration facilities until the federal regulations promulgated pursuant to 42 U.S.C. § 7429(a)(1)(C) become effective or the United States Environmental Protection Agency’s dioxin reassessment is finalized, whichever is later.

(b) Any person applying for a permit or a permit modification to construct and operate a commercial medical waste incineration facility shall complete the following criteria at least thirty (30) days prior to submitting a permit application to the department:

(1) Written notification by certified mail to each property owner and resident of any property adjacent to the proposed site of the intent to apply for a permit or permit modification; and

(2) Publication of a public notice in the largest newspaper published in each county where the property which is the subject matter of the proposed commercial medical waste incineration facility permit or permit modification is located, and in at least one (1) newspaper of statewide circulation, of the intent to apply for a permit or a permit modification to construct and operate a commercial medical waste incineration facility.

(c) The department shall provide written notice by certified mail of the proposed permit or permit modification to the mayor of the city and the county judge of the county where the property which is the subject matter of the permit application is located.

(d) The department shall conduct a public hearing in the county in which the commercial medical waste incineration facility is to be located prior to the issuance of a final permit.

(e)(1)(A) Notwithstanding the general provisions of other laws, permits for the construction or operation of commercial medical waste incineration facilities shall not be transferable upon a change in ownership or control of a commercial medical waste incineration facility.

(B) Prior to any change in ownership or control of a commercial medical waste incineration facility, the proposed new owner must apply for a new permit and abide by the requirements of § 8-1-106.

(C) The department shall process the application as one for a new permit and apply the most current statutes, regulations, technological standards, and operational controls as conditions precedent for granting a permit or operational authority.

(2)(A) Any agreement or contract, written or oral, for a future transfer of operational control or ownership of a permitted commercial medical waste incineration facility or such an agreement or contract contingent upon the department's approval shall be subject to immediate disclosure to the department pursuant to § 8-1-106.

(B) Upon such disclosure, the department shall cause the intent to transfer ownership or control to be publicly noticed and produce the disclosure documentation required by § 8-1-106 for public inspection.

(C) After a reasonable period for public review, the department shall issue a written determination as to whether the intended transfer of ownership or control should be approved, subject to the right of appeal provided by § 8-1-106(e).

(D) During the pendency of the department's and the public's review of the disclosure materials required by this section, any actions taken by the permittee or proposed transferee are at their

own risk, and shall not be construed by the department or the Arkansas Pollution Control and Ecology Commission as accruing equities in their favor.

(3) As used in this subsection:

(A) "Control" shall be presumed to reside with the owner, as defined herein, unless circumstances indicate that a person or entity other than an employee or agent of the owner is exercising ultimate decision-making authority regarding the construction or operation of a commercial medical waste incineration facility; and

(B) "Corporate ownership" shall be defined as a controlling or majority interest in a commercial medical waste incineration facility, either through outright ownership of stock or other indicia of title, or any equitable right to such title as construed from the totality of the circumstances.

(4) Any violation of this subsection shall constitute grounds for permit revocation and imposition of the civil and criminal penalties authorized by § 8-4-103.

(f)(1) If the original permit was issued more than one (1) year prior to the initiation of incineration activities at a commercial medical waste incineration facility, the department may review the conditions of the permit to determine whether good cause exists for modifying operating parameters to assure the maximum feasible control efficiency of emissions.

(2) Any modifications proposed by the department must be supported by appropriate references to the scientific and engineering literature or documented studies conducted by the department.

History. Acts 1992 (1st Ex. Sess.), No. 75, §§ 3, 4; 1995, No. 496, §§ 4, 5.

8-6-1306. Permits — Limitations.

(a) No permits may be issued by the Arkansas Department of Environmental Quality for the construction or operation of a commercial medical waste incineration facility in which any of the following factors are present:

(1) The location of the commercial medical waste incineration facility is within one (1) mile of any occupied structure;

(2) The location of the commercial medical waste incineration facility is within an active fault zone or an area of high earthquake potential;

(3) The location of the commercial medical waste incineration facility is within a regulatory floodway, as adopted by communities participating in the National Flood Program managed by the Federal Emergency Management Administration Commission; or

(4) The location of the commercial medical waste incineration facility is within wetland areas.

(b) Exceptions may be made to these requirements only by obtaining written permission from all real property owners and residents of any

property adjacent to the site of the proposed commercial medical waste incineration facility.

History. Acts 1992 (1st Ex. Sess.), No. 75, § 5.

8-6-1307. Financial assurance guarantees.

(a)(1) Prior to initiating operations at a commercial medical waste incineration facility, the owner or operator must demonstrate:

- (A) Evidence of liability insurance in such amount as the Arkansas Department of Environmental Quality may determine to be necessary for the protection of public health and safety and protection of the environment; and
- (B) Evidence of financial responsibility in such form and amount as the department may determine to be necessary to ensure that, upon abandonment, cessation, or interruption of the operation of the commercial medical waste incineration facility, all appropriate measures can be taken to prevent present and future damage to the public health and safety and to the environment.

(2) In determining the adequacy of the evidence submitted, the department may consider credible evidence indicating that the permittee is undercapitalized, insolvent, or otherwise financially incapable of assuring environmentally sound operations at the permitted commercial medical waste incineration facility.

(b) In determining the nature of financial assurance guarantees required by subsection (a) of this section, the department and the permittee shall follow, to the extent applicable, the federal regulations governing financial assurance of facilities governed by Subtitle D of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6941 et seq.

History. Acts 1995, No. 496, § 6.

SUBCHAPTER 14 — RESIDENTIAL USE OF LANDFILLS

SECTION.	SECTION.
8-6-1401. Purpose.	8-6-1404. Land use.
8-6-1402. Powers and duties.	8-6-1405. Violations.
8-6-1403. Rules and regulations.	

8-6-1401. Purpose.

The purpose of this subchapter is to protect the public health and safety by requiring the Arkansas Pollution Control and Ecology Commission to establish standards and promulgate regulations regarding the post-closure use of solid waste landfills and adjacent areas for residential purposes.

History. Acts 1993, No. 718, § 1.

8-6-1402. Powers and duties.

The Arkansas Pollution Control and Ecology Commission shall have the following powers and duties:

- (1) To adopt rules and regulations to meet the purposes of this subchapter;
- (2) To adopt specific design criteria on the post-closure of solid waste landfills to limit the types and kinds of uses of closed landfills to protect the safety of the environment and limit the possible exposure of the public to any harm; and
- (3) To administer and enforce all laws, rules, and regulations relating to this subchapter.

History. Acts 1993, No. 718, § 3.

8-6-1403. Rules and regulations.

Within six (6) months after August 13, 1993, the Arkansas Pollution Control and Ecology Commission shall adopt rules and promulgate regulations for specific criteria:

- (1) To limit any person, partnership, company, corporation, or other entity from building, erecting, or constructing any house or building for residential purposes upon any land used as or which has been used as a solid waste landfill; and
- (2) To identify those houses and other buildings located on any land used as or which has been used as a solid waste landfill and are currently being used for residential purposes and to limit their future use for residential purposes.

History. Acts 1993, No. 718, § 3.

8-6-1404. Land use.

(a) Six (6) months after August 13, 1993, it shall be unlawful for any person, partnership, company, corporation, or other entity to build, erect, or construct any house, home, or building to be used for residential purposes upon any land used as or which has been used as a solid waste landfill permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

(b) On August 13, 1993, those houses, homes, and other buildings located on any land used as or which has been used as a solid waste landfill and which are currently being used for residential purposes shall be allowed to remain on that land and may be used for residential purposes.

(c)(1) The prohibitions of this subchapter and any rules or regulations promulgated under this subchapter's authority shall be limited to application to the area of the land which was specifically used as a landfill for the placement and disposal of solid waste.

(2) The prohibitions of this subchapter and any rules and regulations promulgated under this subchapter's authority shall not apply to

landfills or the land which was specifically used as a landfill more than twenty-five (25) years before August 13, 1993.

History. Acts 1993, No. 718, § 2.

8-6-1405. Violations.

Any person who violates the provisions of this subchapter shall be subject to the civil penalties prescribed in § 8-6-204.

History. Acts 1993, No. 718, § 4.

SUBCHAPTER 15 — SITING HIGH IMPACT SOLID WASTE MANAGEMENT FACILITIES

SECTION.	SECTION.
8-6-1501. Legislative intent.	8-6-1504. Presumption against certain sites.
8-6-1502. Definitions.	
8-6-1503. Department's permitting authority.	

Publisher's Notes. Acts 1993, No. 1263, § 5, provided: "This act repeals and supersedes the provisions of Arkansas Code 8-6-218."

Effective Dates. Acts 2005, No. 1781, § 3: Apr. 6, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Act 1263 of 1993 is an act that is important to public health and welfare of citizens located near high impact solid waste management facilities. Ambiguities in the current language of Act 1263 of 1993 impair the ability of the Arkansas Department of Environmental Quality to protect the public health and welfare and a delay in the effective date of this act could work irreparable harm upon the

ability of the Arkansas Department of Environmental Quality to effectively administer its regulatory functions and properly implement the public health protections provided through Act 1263 of 1993. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

8-6-1501. Legislative intent.

(a) Through extensive legislation since 1989, the State of Arkansas has made significant strides toward a comprehensive and regionalized approach to solid waste management. The General Assembly recognizes the need to develop viable facilities for managing and disposing of the state's solid waste. This subchapter should be construed as a complement to the state's overall regionalization strategy by encouraging an equitable and efficient dispersal of solid waste management facilities to serve the needs of all citizens.

(b) The General Assembly also acknowledges that, while solid waste management facilities are essential, certain types of solid waste management facilities impose specific burdens on the host community. National trends indicate a tendency to concentrate high impact solid waste disposal facilities in lower-income or minority communities. Such high impact solid waste disposal facilities may place an onus on the host community without any reciprocal benefits to local residents. The purpose of this subchapter is to prevent communities from becoming involuntary hosts to a proliferation of high impact solid waste management facilities.

History. Acts 1993, No. 1263, § 1.

8-6-1502. Definitions.

As used in this subchapter:

(1) “Hazardous substance sites” means the same as set out in § 8-7-503;

(2) “Hazardous waste” means the same as set out in § 8-7-203;

(3)(A) “High impact solid waste management facility” means, excluding the facilities described in subdivision (3)(B) of this section, any solid waste landfill, any solid or commercial hazardous waste incinerator, and any commercial hazardous waste treatment, storage, or disposal facility.

(B) “High impact solid waste management facility” does not include the following:

(i) Recycling or composting facilities;

(ii) Waste tire management sites;

(iii) Solid waste transfer stations;

(iv) Solid waste landfills which have applications pending for either increased or new acreage or provisions for additional services or increased capacity;

(v) A facility dedicated solely to the treatment, storage, or disposal of solid waste or hazardous waste generated by a private industry when the private industry bears the expense of operating and maintaining the facility solely for the disposal of waste generated by the industry or wastes of a similar kind or character;

(vi) A facility or activity dedicated solely to a response action at a location listed by the state or United States Government as a hazardous substance site;

(vii) An existing facility operating under the interim status of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., or implementing regulations of the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., or the Arkansas Hazardous Waste Management Code; or

(viii) Expansion of existing hazardous waste facilities under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., or the Arkansas Hazardous Waste Management Act of 1979,

§ 8-7-201 et seq., either through increased acreage or provision for additional services or increased capacity;

(4) “Host community” means the closest governmental unit as measured along major facility access roads and highways exercising zoning authority encompassed within a twelve-mile radius of the site of a proposed high impact solid waste management facility;

(5) “Permitting” means any governmental authorization to proceed with construction or operation of a facility or activity required by either state law or local ordinance; and

(6)(A) “Solid waste” means the same as set out in § 8-6-702.

(B) However, “solid waste” does not include hazardous waste as defined in this section.

History. Acts 1993, No. 1263, § 2; 2005, No. 1781, § 2.

A.C.R.C. Notes. Acts 2005, No. 1781, § 1, provided: “Legislative findings — Purpose.

“(a) For purposes of this act, the General Assembly finds:

“(1) Following the adoption of Acts 1993, No. 1263 the Arkansas Pollution Control and Ecology Commission adopted rules interpreting Act 1963, No. 1263 by

defining host community as the closest community to the proposed high impact solid waste management facility; and

“(2) While this definition varied from the statutory definition, it did address a potential ambiguity in the statute.

“(b) The purpose of this act is to codify the interpretation that has been followed by the Arkansas Department of Environmental Quality since the adoption of Acts 1963, No. 1263.”

8-6-1503. Department’s permitting authority.

The Arkansas Department of Environmental Quality shall not process any application for a permit subject to § 8-6-1504 until the affected local and regional authorities have issued definitive findings regarding the criteria set out in § 8-6-1504.

History. Acts 1993, No. 1263, § 4.

8-6-1504. Presumption against certain sites.

(a)(1) There shall be a rebuttable presumption against permitting the construction or operation of any high impact solid waste management facility, as defined in this subchapter, within twelve (12) miles of any existing high impact solid waste management facility.

(2) This presumption shall be honored by the Arkansas Department of Environmental Quality, the regional solid waste management board with jurisdiction over the site, and any other governmental entity with permitting or zoning authority concerning any facility.

(b) The presumption in subsection (a) of this section can be rebutted if any of the following is shown:

(1) That no other suitable site for such a high impact solid waste management facility is available within the regional solid waste management district because of the restraints of geology or any other factors listed at § 8-6-706(b)(2); or

(2)(A) That incentives have prompted the host community to accept the siting of the high impact solid waste management facility.

- (B) Such incentives may include, without limitation:
- (i) Increased employment opportunities;
 - (ii) Reasonable host fees not to exceed the prevailing state average;
 - (iii) Contributions by the high impact solid waste management facility to the community infrastructure, e.g. road maintenance, park development, and litter control;
 - (iv) Compensation to adjacent individual landowners for any assessed decrease in property values; or
 - (v) Subsidization of community services.

History. Acts 1993, No. 1263, § 3;
1999, No. 1164, § 83.

SUBCHAPTER 16 — FINANCIAL ASSURANCE

SECTION.

8-6-1601. Purpose.

8-6-1602. Definitions.

8-6-1603. Procedures generally.

SECTION.

8-6-1604. Solid Waste Performance Bond
Fund.

Effective Dates. Acts 1995, No. 510, § 5: Mar. 2, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that this statute is needed in order to make state requirements compatible with federal regulations. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 938, § 9: July 1, 1997. Emergency clause provided: "It is found and determined by the General Assembly

of the State of Arkansas that the fiscal year begins on July 1, and that this emergency clause is necessary in order that uniformity can be achieved at the beginning of the 1997-1998 fiscal year for money deposited into the Landfill Post-Closure Trust Fund and the moneys allocated from that fund for the Illegal Dump Eradication and Corrective Action Program. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1997."

8-6-1601. Purpose.

(a) The purpose of this subchapter is to establish the procedure for posting financial assurance for all permitted solid waste management facilities.

(b) The procedure for issuance of permits for solid waste management facilities shall be as provided in the rules and regulations adopted by the Arkansas Pollution Control and Ecology Commission under this subchapter or as otherwise provided by law.

(c)(1) After an application to operate a solid waste management facility has been reviewed and approved but before a permit is issued, the applicant shall post with the Arkansas Department of Environmental Quality, on forms prescribed by the department in accordance with the regulations issued under this subchapter, a corporate surety bond

for performance or an acceptable alternative, such as a certificate of deposit or letter of credit payable to the department and conditioned upon faithful performance of all requirements of this subchapter, the regulations issued pursuant to this subchapter, and the permit, including, but not limited to, proper closure of the solid waste management facility.

(2) Liability under the bond shall be for the duration of the disposal operation and for that period required to properly close the solid waste management facility and for post-closure care, in accordance with the regulations issued by the commission.

History. Acts 1995, No. 510, § 1; 1999, No. 758, § 1; 1999, No. 1164, § 84.

8-6-1602. Definitions.

As used in this subchapter:

(1) “Active life” means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities;

(2) “Active portion” means that part of a facility or unit that has received or is receiving wastes and that has not been closed;

(3) “Closure plan” means a written plan that describes the steps necessary to close any solid waste management facility at any point during its active life in accordance with the design requirements in rules and regulations issued pursuant to this subchapter, as applicable;

(4) “Commission” means the Arkansas Pollution Control and Ecology Commission;

(5) “Department” means the Arkansas Department of Environmental Quality;

(6) “Disposal site” or “disposal facility” means any place at which solid waste is dumped, abandoned, or accepted or disposed of for final disposition by incineration, landfilling, composting, or any other method;

(7)(A) “Existing municipal solid waste landfill unit” means any municipal solid waste landfill unit that was receiving solid waste as of October 9, 1993, or April 9, 1994, as applicable to the Resource Conservation and Recovery Act of 1976, Subtitle D.

(B) Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management;

(8) “Facility” means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal, treatment, or processing of solid waste;

(9) “Land application unit” means an area where wastes are applied onto or incorporated into the soil surface, excluding manure and wastewater treatment sludge spreading operations, for agricultural purposes or for treatment and disposal;

(10) “Lateral expansion” means a horizontal expansion of the waste boundaries of an existing municipal solid waste landfill unit;

(11)(A) "Municipal solid waste landfill unit" means a discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile.

(B) A municipal solid waste landfill unit also may receive other types of Resource Conservation and Recovery Act of 1976, Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, small quantity generator waste, and industrial solid waste.

(C) Such a landfill may be publicly or privately owned.

(D) A municipal solid waste landfill unit may be a new municipal solid waste landfill unit, an existing municipal solid waste landfill unit, or a lateral expansion;

(12) "New municipal solid waste landfill unit" means any municipal solid waste landfill unit that has not received waste prior to October 9, 1993, or April 9, 1994, as applicable;

(13) "Operator" means the person responsible for the overall operation of a facility or part of a facility;

(14) "Owner" means the person who owns a facility or part of a facility;

(15) "Person" means any individual, corporation, company, firm, partnership, association, trust, state agency, government instrumentality or agency, institution, county, city, town, or municipal authority or trust, venture, or other legal entity, however organized;

(16) "Post-closure plan" means a written plan that provides a description of monitoring and maintenance activities required in rules and regulations issued pursuant to this subchapter and includes the frequency with which these activities will be performed;

(17) "RCRA, Subtitle D" means the United States Environmental Protection Agency, Office of Solid Waste, Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., and the August 1991 Addendum for the Final Criteria for Municipal Solid Waste Landfills, 40 C.F.R. part 258;

(18) "Solid waste management system" means the entire process of storage, collection, transportation, processing, treatment, and disposal of solid waste and includes equipment, facilities, and operations designed for solid waste management activities, including recycling, source reduction, and the enforcement of solid waste management laws and ordinances;

(19) "State" means the State of Arkansas; and

(20)(A) "Surface impoundment" or "impoundment" means a facility or part of a facility that is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials, although it may be lined with human-made materials, that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection well.

(B) Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

History. Acts 1995, No. 510, § 1; 1999, No. 758, § 2; 1999, No. 1164, § 85. Conservation and Recovery Act of 1976 is codified as 42 U.S.C. § 6941 et seq.

U.S. Code. Subtitle D of the Resource

8-6-1603. Procedures generally.

(a) FINANCIAL ASSURANCE FOR CLOSURE.

(1) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of the facility requiring closure as required under the regulations issued pursuant to this subchapter and the permit during the active life of the facility in accordance with the closure plan.

(2) The cost estimate shall equal the cost of closing the largest area of any solid waste management facility requiring closure at any time during its active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan.

(3) During the active life of the solid waste management facility, the owner or operator shall annually adjust the closure cost estimate for inflation.

(4)(A) The owner or operator shall establish financial assurance for closure of any permitted solid waste management facility in compliance with the regulations issued pursuant to this subchapter and the permit.

(B) The owner or operator of any solid waste management facility shall provide continuous financial assurance coverage for closure until released from financial assurance requirements by demonstrating compliance with regulations issued pursuant to this subchapter and the permit.

(C) The amount of financial assurance shall be in accordance with § 8-6-1002(e) and the regulations issued in § 8-6-1002(e).

(b) FINANCIAL ASSURANCE FOR POST-CLOSURE CARE.

(1) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care in compliance with the post-closure plan developed under the regulations issued pursuant to this subchapter and the permit.

(2) The cost estimate for post-closure care shall be based on the most expensive costs of post-closure care during the post-closure care period.

(3) During the active life of the solid waste management facility and during the post-closure care period, the owner or operator shall annually adjust the post-closure cost estimate for inflation.

(4)(A) The owner or operator shall establish financial assurance for costs of post-closure care of any permitted solid waste management facility in compliance with regulations issued pursuant to this subchapter and the permit.

(B) The owner or operator of any solid waste management facility shall provide continuous financial assurance coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with regulations issued pursuant to this subchapter and the permit.

(c) FINANCIAL ASSURANCE FOR CORRECTIVE ACTION.

(1) The owner or operator, if required to undertake a corrective action program under regulations issued pursuant to this subchapter, shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with regulations issued pursuant to this subchapter.

(2)(A) The owner or operator of any solid waste management facility shall establish financial assurance for the most recent corrective action program.

(B) The owner or operator shall provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with regulations issued pursuant to this subchapter.

(d) ALLOWABLE MECHANISMS.

(1) The mechanisms used to demonstrate financial assurance under this section shall ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed.

(2) The financial mechanisms shall be legally valid, binding, and enforceable under state and federal law.

(3) Owners and operators shall choose from the options specified in regulations issued pursuant to this subchapter.

(4)(A) A municipality or county that owns or operates a solid waste management facility receiving any non-RCRA, Subtitle D waste may, in lieu of a performance bond, execute a contract of obligation with the Director of the Arkansas Department of Environmental Quality.

(B) The contract of obligation shall be a binding agreement on the municipality or county, allowing the director or his or her designee to collect any general revenues being disbursed or to be disbursed from the state to the municipality or county on the failure of the municipality or county to fulfill the financial assurance requirements of this subchapter and regulations issued pursuant to this subchapter.

(C) To assure that adequate funds necessary to meet the estimated costs for closure and post-closure care of any non-RCRA, Subtitle D solid waste management facility are available whenever they are needed, the estimated annual general revenue amount pledged under a contract of obligation shall be at least equal to but not less than the estimated annual cost for closure and post-closure care to satisfy the financial assurance requirements for closure and post-closure care of this subchapter.

History. Acts 1995, No. 510, § 1; 1997, No. 938, § 4; 1999, No. 758, § 3; 1999, No. 1164, § 86.

8-6-1604. Solid Waste Performance Bond Fund.

(a) A Solid Waste Performance Bond Fund is hereby established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

(b) In addition to any moneys appropriated by the General Assembly to the fund, there shall be deposited into the fund all forfeitures collected under this subchapter, United States Government moneys designated to enter the fund, any moneys received by the state as a gift or donation to the fund, and all interest earned upon moneys deposited into the fund.

(c) The fund shall be administered by the Arkansas Department of Environmental Quality and will be used to accomplish remedial action, including closure of lands covered by performance bonds forfeited under this subchapter.

(d) Moneys received annually into the fund shall be used by the department for the administration of remedial actions performed as a result of this subchapter.

History. Acts 1995, No. 510, § 1; 1997, No. 938, § 5.

Cross References. Solid Waste Performance Bond Fund, § 19-5-1031.

SUBCHAPTER 17 — OPEN BURNING OF RESIDENTIAL YARD WASTE

SECTION.	SECTION.
8-6-1701. Definitions.	8-6-1703. Restrictions on open burning of
8-6-1702. State policy concerning disposal of yard waste.	yard waste.
	8-6-1704. Private rights unchanged.

8-6-1701. Definitions.

As used in this subchapter:

(1) “Open burning” means the incineration or combustion of waste materials as a method of disposal without any means to control the fuel/air ratio. None of the activities exempted from regulation as air pollution in § 8-4-305 or in regulations adopted by the Arkansas Pollution Control and Ecology Commission shall constitute “open burning”, provided such activities do not cause a fire or safety hazard; and

(2) “Yard waste” means grass clippings, leaves, and shrubbery trimmings collected from residential property.

History. Acts 1997, No. 1151, § 1.

8-6-1702. State policy concerning disposal of yard waste.

It is the policy of this state that the open burning of residential yard waste should be discouraged and that alternative methods of yard waste disposal should be developed and made readily available to all citizens. In enforcement of this policy, the state and local governments should first pursue educational and voluntary compliance efforts, with

punitive sanctions reserved as the last resort to address instances of localized nuisances, fire and safety hazards, or refusal to obey reasonable demands to cease open burning when alternative disposal methods are available.

History. Acts 1997, No. 1151, § 2.

8-6-1703. Restrictions on open burning of yard waste.

(a) The open burning of yard waste is discouraged. Enforcement shall be through informal educational efforts, unless such efforts are proven to be manifestly ineffective in preventing specific instances of open burning.

(b) No citation or civil fine shall be issued or levied against the owner of a private residence for the open burning of brush or yard waste unless such open burning constitutes:

(1) A persistent or recurring offense to surrounding landowners, as determined by complaints to state or local officials;

(2) A fire hazard to surrounding property, as determined by appropriate local officials; or

(3) A safety hazard causing obscured vision on public roads or highways.

(c)(1) No citation or civil fine shall be issued or levied pursuant to the exception of subdivision (b)(1) of this section unless first preceded by a warning order or other appropriate notification delivered to the alleged violator by certified mail, restricted delivery, or other appropriate mechanism of legal service, indicating that a local or state agency has received a complaint concerning open burning activities. Such order or notification need not reveal the identity of the complainants. This order or notification shall advise the alleged violator of alternatives to open burning of yard waste.

(2) As used in subdivision (b)(1) of this section, "persistent or recurring" burning includes activities that are seasonal or annual. Each day of any event of open burning that continues following executed service of a warning order or notification may justify a citation or civil fine unless the alleged violator takes reasonably diligent measures to extinguish or control the fire.

(d) Nothing in this subchapter shall be construed as impairing the authority of local fire control officials to abate fire hazards through whatever regulatory mechanisms deemed necessary and appropriate.

(e) Nothing in this subchapter shall be construed as impairing the authority of the Arkansas Department of Environmental Quality to abate reasonably likely exceedances of National Ambient Air Quality Standards.

History. Acts 1997, No. 1151, § 3; Air Quality Standards implementation, 1999, No. 1164, § 87.

§ 8-4-318.

Cross References. National Ambient

8-6-1704. Private rights unchanged.

This subchapter shall not be construed as impairing common law private rights of action.

History. Acts 1997, No. 1151, § 4.

SUBCHAPTER 18 — ANIMAL WASTE

SECTION.
8-6-1801. Management plan — Substitution.

8-6-1801. Management plan — Substitution.

If the Arkansas Department of Environmental Quality requires a person to obtain an animal waste management plan, including a permit application, prepared by a professional engineer as defined in § 17-30-101, the person may substitute a plan prepared under the supervision of a professional engineer employed by one (1) of the following agencies:

- (1) A conservation district;
- (2) The Arkansas Natural Resources Commission;
- (3) The United States Natural Resources Conservation Service; or
- (4) The University of Arkansas Cooperative Extension Service.

History. Acts 1997, No. 415, § 1; 1999, No. 1164, § 88; 2011, No. 897, § 9.

SUBCHAPTER 19 — STATEWIDE SOLID WASTE MANAGEMENT PLAN ACT

SECTION.
8-6-1901. Title.
8-6-1902. Findings.
8-6-1903. Definitions.

SECTION.
8-6-1904. Development and implementation.

8-6-1901. Title.

This subchapter may be known and cited as the “Statewide Solid Waste Management Plan Act”.

History. Acts 2001, No. 1376, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of General Assembly, Environmental Law, 24 U. Ark. Little Rock L. Rev. 475.

8-6-1902. Findings.

The General Assembly makes the following findings:

- (1) The Arkansas Department of Environmental Quality has been charged by the General Assembly with the responsibility of developing

the Statewide Solid Waste Management Plan which, when feasible, gives emphasis to regional planning;

(2) The difficult task of addressing the complex solid waste needs of the state on a regional basis has been accomplished by creating regional solid waste management boards;

(3) The need for a Statewide Solid Waste Management Plan remains; and

(4) The development and implementation of a Statewide Solid Waste Management Plan is necessary to protect the public's health and the state's environmental quality and to maximize the efficiency of regional solid waste management systems.

History. Acts 2001, No. 1376, § 1.

8-6-1903. Definitions.

As used in this subchapter:

(1) "Board" or "regional board" means a regional solid waste management board established pursuant to § 8-6-701 et seq.;

(2) "Commission" means the Arkansas Pollution Control and Ecology Commission; and

(3) "Department" means the Arkansas Department of Environmental Quality.

History. Acts 2001, No. 1376, § 1.

8-6-1904. Development and implementation.

(a) The Arkansas Department of Environmental Quality shall develop the Statewide Solid Waste Management Plan to establish minimum requirements for all regional solid waste management plans, including requirements for:

(1) Strategic planning;

(2) Reporting;

(3) Public notice and participation;

(4) Services; and

(5) Solutions to problems and issues.

(b) Within one (1) year after the Statewide Solid Waste Management Plan becomes final, each regional solid waste management board shall develop a regional solid waste management plan for departmental review and approval, which includes the minimum requirements contained in the Statewide Solid Waste Management Plan. This new regional solid waste management plan shall replace any existing regional solid waste management plan previously developed.

(c) Failure of any board to develop or implement any requirement contained in the Statewide Solid Waste Management Plan shall subject the board to:

(1) The penalty and enforcement provisions contained in § 8-6-204; or

(2) Denial, discontinuation, or reimbursement of any funding administered by the department to the board.

(d) The Arkansas Pollution Control and Ecology Commission may adopt reasonable rules and regulations necessary to implement or effectuate the purposes and intent of this subchapter.

History. Acts 2001, No. 1376, § 1; deleted “pursuant to § 8-6-717” at the end of 2013, No. 1153, § 3. of (b).

Amendments. The 2013 amendment

CHAPTER 7
HAZARDOUS SUBSTANCES

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. ARKANSAS HAZARDOUS WASTE MANAGEMENT ACT OF 1979.
- 3. ARKANSAS RESOURCE RECLAMATION ACT OF 1979.
- 4. EMERGENCY RESPONSE FUND ACT. [REPEALED.]
- 5. REMEDIAL ACTION TRUST FUND ACT.
- 6. LOW-LEVEL RADIOACTIVE WASTE.
- 7. FEDERALLY LISTED HAZARDOUS SITES.
- 8. REGULATED SUBSTANCE STORAGE TANKS.
- 9. PETROLEUM STORAGE TANK TRUST FUND ACT.
- 10. PUBLIC EMPLOYEES’ CHEMICAL RIGHT TO KNOW ACT.
- 11. VOLUNTARY CLEANUP.
- 12. ABANDONED AGRICULTURAL PESTICIDE DISPOSAL ACT.
- 13. PHASE I ENVIRONMENTAL SITE ASSESSMENT CONSULTANT ACT.
- 14. CONTROLLED SUBSTANCES CONTAMINATED PROPERTY CLEANUP ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

8-7-101. Civil liability of those assisting
at accidents — Definitions.

Cross References. Low-level radioactive waste, § 8-7-601 et seq., § 8-8-201 et seq. Hazardous Materials Transportation Act of 1977, § 27-2-101 et seq.

8-7-101. Civil liability of those assisting at accidents — Definitions.

- (a) As used in this section, unless the context otherwise requires:
- (1) “Discharge” means spillage, leakage, seepage, fire, explosion, or other release; and
 - (2) “Hazardous materials” means all materials and substances which are designated or defined as hazardous by law or regulation of this state or by law or regulation of the United States Government.
- (b) Notwithstanding any law to the contrary, no individual, partnership, corporation, association, or other entity shall be liable in civil

damages as a result of acts taken, voluntarily and without compensation, in the course of rendering care, assistance, or advice with respect to an incident creating a danger to person, property, or the environment as a result of an actual or threatened discharge of hazardous materials, or in preventing, cleaning up, disposing of, or attempting to prevent, clean up, or dispose of any such discharge.

(c) This section shall not preclude liability for civil damages as the result of gross negligence. Reckless, willful, or wanton misconduct shall constitute gross negligence.

History. Acts 1983, No. 913, §§ 1-3; A.S.A. 1947, §§ 82-4225 — 82-4227.

Cross References. Donation of property or equipment, immunity, § 12-75-125.

Emergency Management Assistance Compact, § 12-76-201 et seq.

Emergency responders, immunities and exemptions, § 12-75-128.

Exemption for requested assistance, § 16-120-401.

Good Samaritan law, § 17-95-101.

Interstate Civil Defense and Disaster Compact, § 12-76-101 et seq.

Liability for costs — Immunity from liability, § 8-7-512.

Limitations on civil liability for volunteer health practitioners, § 12-87-111.

SUBCHAPTER 2 — ARKANSAS HAZARDOUS WASTE MANAGEMENT ACT OF 1979

SECTION.

8-7-201. Title.

8-7-202. Purpose.

8-7-203. Definitions.

8-7-204. Criminal, civil, and administrative penalties.

8-7-205. Unlawful actions.

8-7-206. Private right of action.

8-7-207. Venue for legal proceedings.

8-7-208. Official agency for program and agreements.

8-7-209. Powers and duties of the department and commission generally.

8-7-210. Existing rules, regulations, etc.

8-7-211. Variances, waivers, or extensions.

8-7-212. Considerations in administration.

8-7-213. Procedure generally.

8-7-214. Emergency order for imminent hazard.

8-7-215. Permits — Requirement.

SECTION.

8-7-216. Permits — Issuance generally — Interim operations.

8-7-217. Permits — Notice of hearing.

8-7-218. Permits — Compliance with subchapter, state and federal standards, regulations, etc.

8-7-219. Permits — Commercial facilities — Terms and conditions.

8-7-220. Permits — Duration — Renewal.

8-7-221. Permits — Revocation.

8-7-222. Permits — Hearing upon denial, revocation, or modification.

8-7-223. Location of landfill.

8-7-224. Rules for transporting hazardous waste.

8-7-225. Records and examinations.

8-7-226. Fees — Fund established.

8-7-227. Corrective action at permitted facilities and interim status facilities.

Publisher's Notes. Acts 1981, No. 523, § 7, provided that this act shall not repeal Acts 1979, No. 406 (§ 8-7-201 et seq.), either in whole or in part.

Acts 1997, No. 1219, § 1, provided: "Legislative intent. With Act 1230 of 1991, the General Assembly sought to delineate the respective responsibilities of the Ar-

kansas Pollution Control and Ecology Commission and the Arkansas Department of Pollution Control & Ecology. Confusion on these issues in the public's perception continues, however, primarily because of the similarity in the names of these entities. The purpose of this Act is to achieve the legislative intent of Act 1230

of 1991 and to definitively assign the executive, adjudicatory, and rulemaking roles for the State's regulatory functions concerning protection of the environment."

Effective Dates. Acts 1979, No. 406, § 19: Mar. 14, 1979. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that it is essential to the health, welfare and safety of the people of the State of Arkansas and to the minimizing of environmental damage that hazardous wastes be managed in an environmentally sound manner; that the knowledge and technology necessary for alleviating adverse health, environmental, and esthetic impacts resulting from current hazardous waste management and disposal practices are generally available at costs within the financial capabilities of those who generate such wastes, but that such knowledge and technology are not widely used; that existing practices and laws are inadequate; that this act and the implementation thereof are necessary to the accomplishment of the proper management of hazardous wastes and to the welfare of the State of Arkansas and her people. Therefore, an emergency is hereby declared to exist, and this act, being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 920, § 3: Apr. 15, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that inequities now exist in the regulation of hazardous waste management in this state as a result of the permit term currently utilized, and it is essential to the health, welfare and safety of the people of the State of Arkansas and to the minimizing of environmental damage that hazardous wastes be managed in a sound manner which includes providing a sufficiently long permit term to insure that the proper investment of resources will be made in hazardous waste management facilities to provide for the proper management of hazardous wastes and to protect the welfare of the State of Arkansas and her people. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in

full force and effect from and after its passage and approval."

Acts 1991, No. 435, § 5: Mar. 11, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Federal Environmental Protection Agency, Region 6, has indicated that the authorization for the hazardous waste management program for the State of Arkansas may be jeopardized for failure to provide court assessment of reasonable attorney fees and other litigation costs reasonably incurred by a substantially prevailing complainant in an action against the state for failure to comply with the Arkansas Freedom of Information Act in cases involving the Resource Conservation and Recovery Act of 1976 or other hazardous waste issues. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1057, § 9: Apr. 9, 1991. Emergency clause provided: "It is hereby found and determined by the 78th General Assembly that the sanctions imposed by current Arkansas law for environmental violations are among the least stringent in the nation. Thus, current law is inadequate to deter environmental violations, and in fact extends an implicit invitation to irresponsible industries. Protection of the environmental integrity of this state is essential to protect the public's health and economic well-being. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1235, § 5: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the effectiveness of this act on July 1, 1991, is essential to the operation of the Hazardous Waste Management Program within the Department of Pollution Control and Ecology and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1991, could work irreparable harm upon the proper administration and provision of the essential government programs. Therefore, an emergency

is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from and after July 1, 1991.”

Acts 1993, No. 1254, § 9: July 1, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that the provisions of this act are of critical importance to the state’s ability to provide efficient and effective programs in the protection of the state’s environment as mandated through the activities of the Department of Pollution Control and Ecology. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1999, No. 340, § 6: Mar. 1, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that the provisions of the current statutes deny interim status to newly-regulated hazardous waste treatment, storage, and disposal facilities otherwise entitled to operate under federal laws and regulations. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of

its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2005, No. 1166, § 2: Mar. 22, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that a decision of the Arkansas Supreme Court has called into question the authority of the Arkansas Department of Environmental Quality to enforce provisions of hazardous waste management permits; that this authority is necessary for the department to receive delegation from the United States Environmental Protection Agency to administer the federal hazardous waste management permit program; and that this act is immediately necessary to allow the State of Arkansas to continue to administer the federal hazardous waste management permit program, to continue to receive federal grants, and to prevent the State of Arkansas from losing approximately one million dollars (\$1,000,000) in federal grant money. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Act 2005, No. 1824, § 20: July 1, 2005. Emergency clause provided: “The General Assembly of the State of Arkansas hereby finds and determines that the decision of the Arkansas Supreme Court in *Arkansas Department of Environmental Quality v. Brighton Corp.* 352 Ark. 396, 102 S.W.3d 458 (2003), has raised questions regarding the factual proof required to establish a claim for cost recovery under the Arkansas Remedial Action Trust Fund Act and regarding the retroactivity of the statute. The General Assembly further finds and determines that the doubts raised by the decision in the Brighton case have created substantial uncertainty regarding the en-

forcement authority of the Arkansas Department of Environmental Quality and the rights and responsibilities of private parties under the Arkansas Remedial Action Trust Fund Act, all of which require urgent resolution. Therefore, an emer-

gency is declared to exist; and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005, and shall apply retroactively.”

RESEARCH REFERENCES

Am. Jur. 61C Am. Jur. 2d, Pollution Control, § 1052 et seq.

Ark. L. Notes. Looney, Handling Administrative Proceedings Before the Arkansas Pollution Control and Ecology Department and Commission, 1988 Ark. L. Notes 23.

U. Ark. Little Rock L.J. Gales, Does Arkansas (or Anyone Else) Have a Valid Mixture or Derived-From Rule?, 15 U. Ark. Little Rock L.J. 697.

Weaver, The “Mixture” and “Derived-From” Rules Are Alive and Well in Arkansas, 15 U. Ark. Little Rock L.J. 713.

Note, Environmental Law — Retroactive Vacature of the Mixture and Derived-From Rules Under Resource Conservation and Recovery Act, 15 U. Ark. Little Rock L.J. 727.

CASE NOTES

ANALYSIS

Causes of Action.
Statute of Limitations.

Causes of Action.

The legislature intended that the State be able to bring claims for natural resource damages under this subchapter and under §§ 8-4-101 et seq. and 8-6-201 et seq. Arkansas ex rel. Bryant v. Dow Chem. Co., 981 F. Supp. 1170 (E.D. Ark. 1997).

Statute of Limitations.

The environmental protection provisions found in this subchapter and §§ 8-4-101 et seq. and 8-6-201 et seq., are regulatory and protective rather than penal, and therefore the statute of limitations for penal actions, § 16-56-108, does not apply. Arkansas ex rel. Bryant v. Dow Chem. Co., 981 F. Supp. 1170 (E.D. Ark. 1997).

8-7-201. Title.

This subchapter may be cited as the “Arkansas Hazardous Waste Management Act of 1979”.

History. Acts 1979, No. 406, § 1; A.S.A. 1947, § 82-4201.

CASE NOTES

Cited: Ensco, Inc. v. Dumas, 807 F.2d 743 (8th Cir. 1986).

8-7-202. Purpose.

It is the purpose of this subchapter and it is declared to be the policy of this state to:

(1) Protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous waste;

(2) Establish a program of regulation over the generation, storage, transportation, treatment, and disposal of hazardous waste;

(3) Assure the safe and adequate management of hazardous waste within this state;

(4) Qualify the Arkansas Department of Environmental Quality to adopt, administer, and enforce a hazardous waste program pursuant to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.; and

(5) Afford the people of the State of Arkansas a voice in the permitting of hazardous waste facilities within their respective counties.

History. Acts 1979, No. 406, § 2; A.S.A. 1947, § 82-4202; Acts 1989, No. 643, § 1; 1999, No. 1164, § 89.

CASE NOTES

Cited: Arkansas ex rel. Bryant v. Dow Chem. Co., 981 F. Supp. 1170 (E.D. Ark. 1997).

8-7-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(2) "Department" means the Arkansas Department of Environmental Quality or its successor;

(3) "Director" means the Director of the Arkansas Department of Environmental Quality or his or her successor;

(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water in whatever manner so that such hazardous waste or any constituent thereof might or might not enter the environment or be emitted into the air or discharged into any waters including groundwaters;

(5) "Facility" means any land and appurtenances thereon and thereto used for the treatment, storage, or disposal of hazardous waste;

(6) "Generation" means the act or process of producing waste materials;

(7)(A) "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may in the judgment of the department:

(i) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise improperly managed.

(B) "Hazardous waste" includes, but is not limited to, those which are radioactive, toxic, corrosive, flammable, irritants, or strong sensitizers or those which generate pressure through decomposition, heat, or other means;

(8) "Hazardous waste management" means the systematic control of the generation, collection, distribution, marketing, source separation, storage, transportation, processing, recovery, disposal, and treatment of hazardous waste;

(9) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transport;

(10) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company, state agency, government instrumentality or agency, institution, county, city, town, or municipal authority or trust, venture, or any other legal entity, however organized;

(11) "Site" means any real property located within the boundary of the State of Arkansas contemplated or later acquired for the purpose of, but not limited to, landfills or other facilities to be used for treatment, storage, disposal, or generation of hazardous waste;

(12)(A) "Storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of hazardous waste.

(B) Storage by means of burial shall be deemed to constitute disposal within the meaning of this subchapter;

(13) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal;

(14) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the hazardous waste or to render the hazardous waste less hazardous, safer for transport, amenable to recovery, amenable to storage, amenable to disposal, or reduced in volume; and

(15) "Treatment facility" means a location at which waste is subjected to treatment and may include a facility where waste has been generated.

History. Acts 1979, No. 406, § 3; A.S.A. 1993, No. 994, § 2; 1997, No. 1219, § 9; 1947, § 82-4203; Acts 1989, No. 643, § 2; 1999, No. 1164, § 90.

CASE NOTES

ANALYSIS

Authority of Commission.
Disposal.

Authority of Commission.

The legislature intended both the Waste Act and the Hazardous Waste Act to allow the Arkansas Department of Pollution Control and Ecology (PC & E), within certain guidelines, to determine what substances are permitted under those acts, and a decision by PC & E permitting a category of waste not defined in any of the acts was not an abuse of discretion. *Bryant v. Mathis*, 310 Ark. 737, 839 S.W.2d 528 (1992).

Disposal.

The phrase "at the time of disposal" formerly contained in § 8-7-512(a)(3) and (4), taken in conjunction with the definition of disposal found in this section, should be construed to mean at the time the hazardous substances were discharged, deposited, injected, dumped, spilled, leaked, or placed any hazardous substances into or on any land or water. *Ark. Dep't of Env'tl. Quality v. Brighton Corp.*, 352 Ark. 396, 102 S.W.3d 458 (2003) (decided under former version of section).

8-7-204. Criminal, civil, and administrative penalties.**(a) CRIMINAL PENALTIES.**

(1)(A) Any person who violates any provision of this subchapter, who commits any unlawful act under this subchapter, or who violates any rule, regulation, or order of the Arkansas Pollution Control and Ecology Commission or the Arkansas Department of Environmental Quality shall be guilty of a misdemeanor.

(B) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than one (1) year or a fine of not more than twenty-five thousand dollars (\$25,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(2)(A) It shall be unlawful for a person to:

(i) Violate any provision of this subchapter, commit any unlawful act under this subchapter, or violate any rule, regulation, or order of the commission or the department, and leave the state or remove his or her person from the jurisdiction of this state; or

(ii) Purposely or knowingly make any false statement, representation, or certification in any document required to be maintained under this subchapter or falsify, tamper with, or render inaccurate any monitoring device, method, or record required to be maintained under this subchapter.

(B) A person who violates this subdivision (a)(2) shall be guilty of a felony. Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than five (5) years or a fine of not more than fifty thousand dollars (\$50,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(3)(A) Any person who treats, stores, transports, or disposes of any hazardous waste and purposely, knowingly, or recklessly causes the release of hazardous waste into the environment in a manner not otherwise permitted by law or creates a substantial likelihood of endangering human health, animal or plant life, or property shall be guilty of a felony.

(B) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than ten (10) years or a fine of not more than one hundred thousand dollars (\$100,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(4)(A) Any person who treats, stores, transports, or disposes of any hazardous waste and purposely, knowingly, or recklessly causes the release of hazardous waste into the environment in a manner not otherwise permitted by law, thereby placing another person in imminent danger of death or serious bodily injury, shall be guilty of a felony.

(B) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than twenty (20) years or a fine of not more than two hundred fifty thousand dollars (\$250,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(5) Notwithstanding the limits on fines set in subdivisions (a)(1)-(4) of this section, if a person convicted under any of subdivisions (a)(1)-(4) of this section has derived pecuniary gain from commission of the offenses, then he or she may be sentenced to pay a fine not to exceed two (2) times the amount of the pecuniary gain.

(b) **CIVIL PENALTIES.** The department may institute a civil action in any court of competent jurisdiction to accomplish any of the following:

(1) Restrain any violation of or compel compliance with the provisions of this subchapter and of any rules, regulations, orders, permits, or plans issued pursuant thereto;

(2) Affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter;

(3) Recover all costs, expenses, and damages to the department and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including, but not limited to, natural resource damages;

(4) Assess civil penalties in an amount not to exceed twenty-five thousand dollars (\$25,000) per day for violations of this subchapter and of any rules, regulations, permits, or plans issued pursuant to this subchapter; or

(5) Recover civil penalties assessed pursuant to subsection (c) of this section.

(c) Any person who violates any provision of this subchapter and regulations, rules, permits, or plans issued pursuant to this subchapter may be assessed an administrative civil penalty not to exceed twenty-five thousand dollars (\$25,000) per violation. Each day of a continuing violation may be deemed a separate violation for purposes of civil penalty assessment. No civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing in accordance with regulations adopted by the commission. All hearings and appeals arising under this subchapter shall be conducted in accordance with the procedures prescribed by §§ 8-4-205, 8-4-212, and 8-4-218 — 8-4-229. The procedures of this subsection may also be used to recover all costs, expenses, and damages to the department and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including, but not limited to, natural resource damages.

(d) As an alternative to the limits on civil penalties set in subsections (b) and (c) of this section, if a person found liable in actions brought under subsection (b) or subsection (c) of this section has derived pecuniary gain from commission of the offenses, then he or she may be ordered to pay a civil penalty equal to the amount of the pecuniary gain.

(e)(1) All moneys collected as reimbursement for expenses, costs, and damages to the department shall be deposited into the operating fund of the department.

(2) All moneys collected as civil penalties pursuant to this section shall be deposited into the Hazardous Substance Remedial Action Trust Fund as provided by § 8-7-509.

(3)(A) In his or her discretion, the Director of the Arkansas Department of Environmental Quality may authorize in-kind services as partial mitigation of cash penalties for use in projects or programs designed to advance environmental interests.

(B) The violator may provide in-kind services or cash contributions as directed by the department by utilizing the violator's own expertise, by hiring and compensating subcontractors to perform the in-kind services, by arranging and providing financing for the in-kind services, or by other financial arrangements initiated by the department in which the violator and the department retain no monetary benefit, however remote.

(C) The in-kind services shall not duplicate or augment services already provided by the department through appropriations of the General Assembly.

(4) All moneys collected to cover the costs, expenses, or damages of other agencies or subdivisions of the state, including natural resource damages, shall be distributed to the appropriate governmental entity.

(f) The culpable mental states referenced throughout this section shall have the same definitions as set out in § 5-2-202.

(g) Solicitation or conspiracy, as defined by the Arkansas Criminal Code at § 5-3-301 et seq. and § 5-3-401 et seq., to commit any criminal act proscribed by this section and §§ 8-4-103 and 8-6-204 shall be punishable as follows:

(1) Any solicitation or conspiracy to commit an offense under this section which is a misdemeanor shall be a misdemeanor subject to fines not to exceed fifteen thousand dollars (\$15,000) per day of violation or imprisonment for more than six (6) months, or both such fine and imprisonment;

(2) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of fifty thousand dollars (\$50,000) per day or imprisonment up to five (5) years shall be a felony subject to fines up to thirty-five thousand dollars (\$35,000) per day or imprisonment up to two (2) years, or both such fine and imprisonment;

(3) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of one hundred thousand dollars (\$100,000) per day or imprisonment up to ten (10) years shall be a felony subject to fines up to seventy-five thousand dollars (\$75,000) per day or imprisonment up to seven (7) years, or both such fine and imprisonment; and

(4) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of two hundred fifty thousand dollars (\$250,000) per day or imprisonment up to twenty (20) years shall be a felony subject to fines up to one hundred fifty thousand dollars (\$150,000) per day or imprisonment up to fifteen (15) years, or both such fine and imprisonment.

(h) In cases considering suspension of sentence or probation, efforts or commitments by the defendant to remediate any adverse environmental effects caused by his or her activities may be considered by the court to be restitution as contemplated by § 5-4-301.

(i) A business organization, its agents or officers, may be found liable under this section in accordance with the standards set forth in § 5-2-501 et seq. and sentenced to pay fines in accordance with the provisions of § 5-4-201(d) and (e).

(j) For the purposes of this subchapter, the court may assess against the State of Arkansas reasonable attorney's fees and other litigation costs reasonably incurred in any case under this subchapter in which the complainant has substantially prevailed in an action against the state for failure to comply with the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 1979, No. 406, § 13; 1983, No. 456, § 1; A.S.A. 1947, § 82-4213; Acts 1989, No. 643, § 3; 1991, No. 435, § 1; 1991, No. 1057, §§ 2, 5; 1993, No. 731, § 2; 1995, No. 895, § 6; 2005, No. 1824, § 7.

Publisher's Notes. Acts 1991, No. 1057, § 1, provided: "The General Assembly finds and determines that the criminal and civil penalties imposed by current law do not accurately reflect the degree of concern which the state places upon its

environmental resources. The current criminal penalties for hazardous waste and other violations are among the lowest in the nation. Civil penalties for violations of the state water, air, solid waste and hazardous waste pollution control statutes are set at the minimum necessary to receive federally delegated programs. In declaring itself "The Natural State," the State of Arkansas demonstrated its commitment to its environmental resources. This commitment must be reflected in its

environmental enforcement program. This act shall be liberally construed so as to achieve remedial intent."

Acts 1991, No. 1057, § 5, is also codified as §§ 8-4-103 (h)-(k) and 8-6-204 (f)-(i).

Acts 1993, No. 731, § 1 provided: "The state of Arkansas has an abundance of environmental concerns which need re-

search and study, as well as concerns which have an immediate remedy but are absent funds to facilitate their implementation. This amendment serves to clarify the existing use of in-kind services as penalties, to include cash contributions for use in worthy environmental projects and to advance environmental interests."

CASE NOTES

Liability.

Anyone who disposes of, transports, or treats hazardous waste in a manner likely to cause water or air pollution, is liable to the State for costs, expenses and damages,

including natural resource damages. *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

Cited: *United States v. Vertac Chem. Corp.*, 489 F. Supp. 870 (E.D. Ark. 1980).

8-7-205. Unlawful actions.

It shall be unlawful for any person to:

(1) Violate any provisions of this subchapter or of any rule, regulation, permit, or order adopted or issued under this subchapter;

(2) Knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this subchapter or falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this subchapter or any rules or regulations adopted pursuant thereto;

(3) Dispose of hazardous waste at any disposal site or facility other than one for which a permit has been issued by the Arkansas Department of Environmental Quality pursuant to this subchapter; or

(4) Store, collect, transport, treat, or dispose of any hazardous waste contrary to the rules, regulations, permits, or orders issued under this subchapter or in such a manner or place as to create or as is likely to be created a public nuisance or a public health hazard or to cause or is likely to cause water or air pollution within the meaning of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

History. Acts 1979, No. 406, § 12; A.S.A. 1947, § 82-4212.

CASE NOTES

ANALYSIS

Escape of Dioxin.
Liability.

Escape of Dioxin.

Where the record showed that dioxin was escaping from a plant site in quantities that under an acceptable, but unproved, theory could be considered as

teratogenic, mutagenic, fetotoxic, and carcinogenic, there was a reasonable medical concern over the public health, and therefore the escape of dioxin into a creek and bayou from the plant site constituted an imminent and substantial endangerment to the health of persons and was subject to abatement. *United States v. Vertac Chem. Corp.*, 489 F. Supp. 870 (E.D. Ark. 1980), *aff'd*, 961 F.2d 796 (8th Cir. 1992).

Liability.

Anyone who disposes of, transports, or treats hazardous waste in a manner likely to cause water or air pollution, is liable to

the State for costs, expenses and damages, including natural resource damages. *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

8-7-206. Private right of action.

Any person adversely affected by a violation of this subchapter or of any rules, regulations, or orders issued pursuant thereto shall have a private right of action for relief against such violation.

History. Acts 1979, No. 406, § 15; A.S.A. 1947, § 82-4215.

8-7-207. Venue for legal proceedings.

All legal proceedings affecting hazardous waste treatment or hazardous waste disposal facilities in this state shall be brought in the county in which the facility is located.

History. Acts 1979, No. 406, § 16; A.S.A. 1947, § 82-4216.

8-7-208. Official agency for program and agreements.

(a) The Arkansas Department of Environmental Quality is designated as the official agency for the state for all purposes of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., and for the purpose of such other state or federal legislation as may be enacted to assist in the management of hazardous wastes.

(b)(1) The General Assembly encourages cooperative activities by the department with other states for the improved management of hazardous wastes and, so far as is practicable, uniform state laws relating to the management of hazardous wastes and compacts between this and other states for the improved management of hazardous wastes.

(2) The department may enter into agreements with the responsible authorities of the United States or of other states, subject to approval by the Governor, relative to policies, methods, means, and procedures to be employed in the management of hazardous wastes not inconsistent with the provisions of this subchapter and may carry out such agreements.

History. Acts 1979, No. 406, § 10; A.S.A. 1947, § 82-4210.

8-7-209. Powers and duties of the department and commission generally.

(a) The Arkansas Department of Environmental Quality shall have the following powers and duties:

(1) To administer and enforce all laws, rules, and regulations regarding hazardous waste management;

(2) To conduct and publish such studies of hazardous waste management in this state as shall be deemed appropriate, including, but not limited to:

(A) A description of the sources of hazardous waste generated within the state;

(B) Information regarding the types and quantities of such hazardous waste; and

(C) A description of current hazardous waste management practices and costs including treatment, recovery, and disposal;

(3) To develop, publish, and implement plans in accordance with the provisions of this subchapter for the safe and effective management of hazardous waste within this state, including, but not limited to:

(A) The establishment of criteria for the identification of those locations within the state which are suitable for establishment of hazardous waste treatment or disposal facilities or sites; and

(B) Those locations which are not suitable for such purposes;

(4) To establish criteria for determination of whether any waste or combination of wastes is hazardous for purposes of this subchapter and to identify and specify wastes or combination of wastes as being hazardous;

(5) To issue, continue in effect, revoke, modify, or deny, under such conditions as it may prescribe, permits for the establishment, construction, operation, or maintenance of hazardous waste treatment, storage, or disposal facilities or sites, as more particularly prescribed by §§ 8-7-215 — 8-7-222;

(6) To make such investigations and inspections and to hold such hearings, after notice, as the Arkansas Department of Environmental Quality may deem necessary or advisable for the discharge of the Arkansas Department of Environmental Quality's duties under this subchapter and to ensure compliance with this subchapter and any orders, rules, and regulations issued pursuant thereto;

(7) To make, issue, modify, revoke, and enforce orders, after notice and hearing, prohibiting violation of any of the provisions of this subchapter or of any rules and regulations issued pursuant thereto or any permit issued thereunder, and requiring the taking of such remedial measures as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter;

(8)(A) To institute proceedings in the name of the Arkansas Department of Environmental Quality in any court of competent jurisdiction to compel compliance with and to restrain any violation of the provisions of this subchapter or any rules, regulations, and orders issued pursuant thereto or any permit issued thereunder, and require the taking of such remedial measures as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter.

(B) In any civil action in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that

irreparable damage will occur should the requested relief not be granted, nor that the remedy at law is inadequate;

(9) To initiate, conduct, and support research, demonstration projects, and investigations, and coordinate all state agency research programs pertaining to hazardous waste management, and establish technical advisory committees to assist in the development of procedures, standards, criteria, and rules and regulations, the members of which may be reimbursed for travel expenses in accordance with § 25-16-901 et seq.;

(10) To establish policies and standards for effective hazardous waste management;

(11) To establish standards and procedures for the certification of personnel to operate hazardous waste treatment or disposal facilities or any commercial hazardous waste management facilities; and

(12) In addition to the powers enumerated above, the Arkansas Department of Environmental Quality shall have and may use in the administration and enforcement of this subchapter all of the powers which the Arkansas Department of Environmental Quality has under other laws administered by the Arkansas Department of Environmental Quality, including the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., and the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

(b) The Arkansas Pollution Control and Ecology Commission shall have the following powers and duties:

(1) To adopt, after notice and public hearing, and to promulgate, modify, repeal, and enforce rules and regulations regarding hazardous waste management as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter and the powers and duties of the Arkansas Department of Environmental Quality under this subchapter, including, but not limited to, rules and regulations for:

(A) The containerization and labeling of hazardous waste, which rules, to the extent practicable, shall be consistent with those issued by the United States Department of Transportation, the United States Environmental Protection Agency, the State Highway Commission, and the Arkansas Department of Transportation;

(B) Establishing standards and procedures for the safe operation and maintenance of facilities;

(C) Identifying those wastes or combination of wastes which are incompatible and which may not be stored or disposed of together and procedures for preventing the storage, disposal, recovery, or treatment of incompatible wastes together;

(D) The reporting of hazardous waste management activities;

(E) Establishing standards and procedures for the certification of supervisory personnel at hazardous waste treatment or disposal facilities or sites as required under § 8-7-219(3); and

(F) Establishing a manifest system for the transport of hazardous waste and prohibiting the receipt of hazardous waste at storage,

processing, recovery, disposal, or transport facilities or sites without a properly completed manifest;

(2)(A) In promulgation of such rules and regulations, prior to the submittal to public comment and review of any rule, regulation, or change to any rule or regulation that is more stringent than federal requirements, the Arkansas Pollution Control and Ecology Commission shall duly consider the economic impact and the environmental benefit of such rule or regulation on the people of the State of Arkansas, including those entities that will be subject to the regulation.

(B) The Arkansas Pollution Control and Ecology Commission shall promptly initiate rulemaking proceedings to further implement the analysis required under subdivision (b)(2)(A) of this section.

(C) The extent of the analysis required under subdivision (b)(2)(A) of this section shall be defined in the Arkansas Pollution Control and Ecology Commission's rulemaking required under subdivision (b)(1) of this section. It will include a written report which shall be available for public review along with the proposed rule in the public comment period.

(D) Upon completion of the public comment period, the Arkansas Pollution Control and Ecology Commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent regulation;

(3) Promulgation of rules, regulations, and procedures not otherwise governed by applicable law which the Arkansas Pollution Control and Ecology Commission deems necessary to secure public participation in environmental decision-making processes;

(4) Promulgation of rules and regulations governing administrative procedures for challenging or contesting Arkansas Department of Environmental Quality actions;

(5) In the case of permitting or grants decisions, providing the right to appeal a permitting or grants decision rendered by the Director of the Arkansas Department of Environmental Quality or his or her delegatee;

(6) In the case of an administrative enforcement or emergency action, providing the right to contest any such action initiated by the director;

(7) Instruct the director to prepare such reports or perform such studies as will advance the cause of environmental protection in the state;

(8) Make recommendations to the director regarding overall policy and administration of the Arkansas Department of Environmental Quality, provided, however, that the director shall always remain within the plenary authority of the Governor; and

(9) Upon a majority vote, initiate review of any director's decision.

History. Acts 1979, No. 406, § 4; A.S.A. 1947, § 82-4204; Acts 1989, No. 643, § 4; 1997, No. 250, § 48; 1997, No. 1055, § 2; 1997, No. 1219, § 9; 2017, No. 707, § 9.

A.C.R.C. Notes. Acts 1997, No. 1055, § 1, provided: "The purpose of this act is to bring the state law into coordination with the existing federal law. The program of permitting hazardous waste transporters initiated through the existing state law has for many years proven an administrative burden on both the Department of Pollution Control and Ecology

and on industry without providing any additional protection to the environment or public health. Therefore, this act will eliminate an unnecessary regulation while maintaining the integrity of the programs which provide the benefits of notice, monitoring, and enforcement."

Amendments. The 2017 amendment, in (b)(1)(A), inserted "United States" following "by the" and substituted "Department of Transportation" for "State Highway and Transportation Department".

CASE NOTES

Cited: United States v. Vertac Chem. Corp., 489 F. Supp. 870 (E.D. Ark. 1980).

8-7-210. Existing rules, regulations, etc.

(a) All existing rules and regulations of the Arkansas Department of Environmental Quality not inconsistent with the provisions of this subchapter relating to subjects embraced within this subchapter shall remain in full force and effect until expressly repealed, amended, or superseded by the Arkansas Pollution Control and Ecology Commission, insofar as the rules and regulations do not conflict with the provisions of this subchapter.

(b) All orders entered, permits granted, and pending legal proceedings instituted by the department relating to subjects embraced within this subchapter shall remain unimpaired and in full force and effect until superseded by actions taken by the department or commission under this subchapter.

(c) No existing civil or criminal remedies, public or private, for any wrongful action shall be excluded or impaired by this subchapter.

(d) The provisions of this subchapter and the rules and regulations promulgated pursuant to this subchapter shall govern if they conflict with the provisions of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., or the Arkansas Solid Waste Management Act, § 8-6-201 et seq., or any action taken by the department or commission under those laws.

History. Acts 1979, No. 406, § 15; A.S.A. 1947, § 82-4215.

CASE NOTES

Cited: Bryant v. Mathis, 310 Ark. 737, 839 S.W.2d 528 (1992).

8-7-211. Variances, waivers, or extensions.

When the application of or compliance with any rule or regulation issued under this subchapter, in the judgment of the Arkansas Pollution Control and Ecology Commission, would cause undue or unreasonable hardship to any person and not cause substantially adverse environmental effects, the commission may grant a variance, waiver, or extension to the same extent that such variance, waiver, or extension would be allowable under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., and the regulations promulgated thereunder. In no case shall the duration of any such variance exceed one (1) year. Renewals or extensions may be given only after opportunity for public comment on each such renewal or extension.

History. Acts 1979, No. 406, § 14; A.S.A. 1947, § 82-4214; Acts 1989, No. 643, § 5.

8-7-212. Considerations in administration.

(a) In administering the provisions of this subchapter, the Arkansas Department of Environmental Quality may adopt and give appropriate effect to variations within this state in climate, geology, population density, and such other factors as may be relevant to the management of hazardous waste, the establishment of standards and permit conditions, and to the siting of permitted facilities.

(b) To the extent practicable, the rules, regulations, and procedures adopted by the department pursuant to this subchapter shall be consistent with other environmentally related rules, regulations, and procedures of the department. In administering the provisions of this subchapter and of all other laws under the administration of the department, the department and the Arkansas Pollution Control and Ecology Commission shall coordinate and expedite the issuance of permits required by an applicant under one (1) or more laws, to the end of eliminating, insofar as practicable, any duplication of unnecessary time and expense to the applicant and the department.

(c) The department shall integrate all provisions of this subchapter with the appropriate provisions of all other laws which grant regulatory authority to the department for purposes of administration and enforcement and shall avoid duplication to the maximum extent practicable.

History. Acts 1979, No. 406, § 6; A.S.A. 1947, § 82-4206.

8-7-213. Procedure generally.

The procedure of the Arkansas Department of Environmental Quality and the Arkansas Pollution Control and Ecology Commission for issuance of rules and regulations, conduct of hearings, notice, power of subpoena, review of action on permits, right of appeal, presumptions, finality of actions, and related matters shall be as provided in § 8-4-101

et seq. and § 8-4-201 et seq., including, but not limited to, §§ 8-4-205, 8-4-210, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229 if they are not in conflict with the provisions set forth in this subchapter.

History. Acts 1979, No. 406, § 9; A.S.A. 1947, § 82-4209.

8-7-214. Emergency order for imminent hazard.

(a)(1) Notwithstanding any other provisions of this subchapter, the Director of the Arkansas Department of Environmental Quality, upon finding that the storage, transportation, treatment, or disposal of any waste may present an imminent and substantial hazard to the health of persons or to the environment and that an emergency exists requiring immediate action to protect the public health and welfare, he or she may, without notice or hearing, issue an order reciting the existence of such an imminent hazard and emergency and requiring that such action be taken as he or she determines to be necessary to protect the health of such persons or the environment and to meet the emergency.

(2) The order of the director may include, but is not limited to, directing the operator of the treatment or disposal facility or site or the custodian of the waste which constitutes the hazard to take such steps as are necessary to prevent the act or eliminate the practice which constitutes the hazard and, with respect to a facility or site, may order cessation of operation.

(b)(1) Any person to whom the order is directed shall comply with it immediately, but, on written application to the director within ten (10) days of the issuance of the order, that person shall be afforded a hearing before the Arkansas Pollution Control and Ecology Commission within ten (10) days after receipt of the written request.

(2) On the basis of the hearing, the commission shall continue the order in effect or shall revoke or modify it.

History. Acts 1979, No. 406, § 8; A.S.A. 1947, § 82-4208.

CASE NOTES

Cited: United States v. Vertac Chem. Corp., 489 F. Supp. 870 (E.D. Ark. 1980).

8-7-215. Permits — Requirement.

(a) No person shall construct, substantially alter, or operate any hazardous waste treatment or disposal facility or site, nor shall any person store, treat, or dispose of any hazardous waste without first obtaining a permit from the Arkansas Department of Environmental Quality for the facility, site, or activity.

(b) Persons who construct, substantially alter, or operate a facility which generates hazardous waste shall be subject to the reporting requirements of this subchapter but shall not be required to obtain a

permit under this subchapter unless such person also stores, treats, or disposes of hazardous waste.

History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205; Acts 1997, No. 1055, § 3.

A.C.R.C. Notes. Acts 1997, No. 1055, § 1, provided: "The purpose of this act is to bring the state law into coordination with the existing federal law. The program of permitting hazardous waste transporters initiated through the existing state law has for many years proven

an administrative burden on both the Department of Pollution Control and Ecology and on industry without providing any additional protection to the environment or public health. Therefore, this act will eliminate an unnecessary regulation while maintaining the integrity of the programs which provide the benefits of notice, monitoring, and enforcement."

8-7-216. Permits — Issuance generally — Interim operations.

(a) A permit shall be issued under such terms and conditions as the Arkansas Department of Environmental Quality may prescribe under this subchapter and under the terms and conditions the Arkansas Department of Transportation may prescribe for the transportation of hazardous waste.

(b) A facility required to have a permit under this subchapter or which is operating under the terms of a permit issued under the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., or the Arkansas Solid Waste Management Act, § 8-6-201 et seq., as of March 14, 1979, may continue in operation until such time as a permit is issued under this subchapter by the Arkansas Department of Environmental Quality, provided the owner or operator of such facility has made application on forms provided by the Arkansas Department of Environmental Quality for such permit by September 14, 1979.

(c)(1) A facility required to have a permit under this subchapter due to statutory or regulatory changes which occur after March 14, 1979, may continue in operation until such time as a permit is issued under this subchapter, provided that the owner or operator notifies the Arkansas Department of Environmental Quality of newly regulated activities at the facility within ninety (90) days of the effective date of each statutory or regulatory change and makes initial permit application within one hundred eighty (180) days of the effective date of such changes on forms provided by the Arkansas Department of Environmental Quality.

(2) This subsection shall not apply to any facility at which interim operating authority or a final permit has previously been terminated or denied.

(d) Interim operating authority acquired pursuant to subsection (b) of this section shall terminate for incineration facilities on November 8, 1989, unless the owner or operator applied for final permit determination by November 8, 1986.

(e) Interim operating authority acquired pursuant to subsection (b) of this section shall terminate for storage and treatment facilities on November 8, 1992, unless the owner or operator applied for final permit determination by November 8, 1988.

(f) Interim operating authority acquired pursuant to subsection (c) of this section for a land disposal facility shall terminate twelve (12) months after the land disposal facility first becomes subject to permitting unless the owner or operator certifies compliance with all applicable groundwater monitoring and financial responsibility requirements.

History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205; Acts 1989, No. 643, § 6; 1991, No. 489, § 1; 1991, No. 786, § 8; 1999, No. 340, § 2; 2017, No. 707, § 10.

Publisher's Notes. Acts 1999, No. 340, § 1, provides: "Legislative intent. In drafting Act 643 of 1989, the General Assembly sought to allow for existing and newly-regulated hazardous waste management facilities to benefit from continued operation under interim status while their application for a treatment, storage, or disposal permit is being reviewed and processed for approval in exactly the same manner as provided for by the federal laws and regulations for these activities. As enacted, the language at § 8-7-216(d)

and (e) would deny interim status to newly-regulated treatment, storage, and disposal facilities, a much more stringent requirement than envisioned in Act 643. The purpose of this Act is to achieve the legislative intent of Act 643 of 1989 and to restore equivalency of the state requirements with those of the federal government."

Amendments. The 2017 amendment, in (a), substituted "A permit" for "Permits", deleted "the provisions of" preceding "this subchapter", substituted "the terms" for "such terms", and substituted "the Arkansas Department of Transportation" for "as the Arkansas State Highway and Transportation Department".

8-7-217. Permits — Notice of hearing.

No permit shall be issued by the Arkansas Department of Environmental Quality or the Arkansas Pollution Control and Ecology Commission for any commercial hazardous waste treatment, storage, or disposal facility unless thirty (30) days' advance notice of a hearing has been placed in the largest newspaper published in the county in which a commercial hazardous waste treatment, storage, or disposal facility or facilities are located or proposed to be located, as well as published in the largest newspaper published in the adjoining counties. If there is no newspaper published in any of the counties so affected, the notice shall be published in the newspaper having the largest circulation in the county.

History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205.

8-7-218. Permits — Compliance with subchapter, state and federal standards, regulations, etc.

(a) No permits shall be issued by the Arkansas Department of Environmental Quality for any facility unless the department, after opportunity for public comment, has determined that the facility has been designed and will be operated in such manner that any emission from the facility will comply with the provisions of this subchapter and all applicable state and federal standards and regulations concerning air and water quality and that the transfer, handling, and storage of materials within the facility will not cause conditions which would

violate state and federal standards concerning worker safety or create unreasonable hazards to the environment or to the health and welfare of the people living and working in or near the facility.

(b)(1) No permit shall be issued by the department for any commercial disposal or storage facility off the site where the hazardous waste is generated until the department has adopted rules, regulations, standards, and procedures pursuant to § 8-7-209.

(2) The rules, regulations, standards, procedures, or other requirements adopted and imposed by the department shall not be less stringent than the regulations promulgated or revised by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.

(c) No permit shall be issued for hazardous waste treatment, storage, or disposal facilities except under the terms of regulations of the department which conform to the provisions of § 3005 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6925.

History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205; Acts 1989, No. 643, § 7; 1999, No. 1164, § 91.

8-7-219. Permits — Commercial facilities — Terms and conditions.

No permit shall be issued for any commercial hazardous waste treatment, storage, or disposal facility unless that facility meets such terms and conditions as the Arkansas Department of Environmental Quality may direct, including, but not limited to:

(1) Evidence of liability insurance in such amount as the department may determine to be necessary for the protection of the public health and safety and the protection of the environment;

(2) Evidence of financial responsibility in such form and amount as the department may determine to be necessary to ensure that, upon abandonment, cessation, or interruption of the operation of the facility, all appropriate measures are taken to prevent present and future damage to the public health and safety and to the environment;

(3)(A) Evidence that the personnel employed at the hazardous waste treatment or disposal facility meet such qualifications as to education and training as the department may determine to be necessary to assure the safe and adequate operation of the facility.

(B) Persons charged with the direct supervision of the operation of any facility must be certified by the department as having such qualifications after a review of the types, properties, and volume of hazardous waste to be treated or disposed of at the facility.

(C) The department may require the recertification of supervisory personnel when there is any significant change in the types or properties of hazardous waste being treated or disposed of in any facility;

(4) Evidence of an appropriate preventive maintenance program, spill prevention plan, safety procedures, and contingency plans which

have been developed in consultation with the fire department having jurisdiction and by the mayor or city manager of the municipality or by the county judge of the county in which the facility is to be located;

(5) Evidence that the location of the facility is consistent with the siting criteria established by the department as provided in § 8-7-209(a)(3). The provisions of this subdivision (5) shall not apply to a treatment facility which began operation prior to the date of enactment of this act and which has an existing operating permit from the department, or to any subsequent modifications to such treatment facility, provided that the owner of the treatment facility can demonstrate that the modifications do not materially increase the degree of hazards associated with the treatment facility; and

(6) Evidence of such forms of assurance, including full fee ownership of lands, and all mineral rights thereto, to ensure that the owner of any hazardous waste landfill has the legal authority to commit the hazardous waste landfill to perpetual security.

History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205.

Acts 1979, No. 406, was signed by the Governor and became effective on March 14, 1979.

Publisher's Notes. In reference to the term "the date of enactment of this act,"

8-7-220. Permits — Duration — Renewal.

(a) Permits shall be issued for a period not to exceed ten (10) years. However, land disposal permits shall be reviewed five (5) years from the date of issuance or reissuance and shall be modified as necessary to assure that the facility continues to comply with the currently applicable laws and regulations.

(b) Permits shall be subject to renewal by the Arkansas Department of Environmental Quality upon a showing that the facility has been operated in accordance with the terms of the permit, the rules and regulations applicable to such facility, and in compliance with all other provisions of this subchapter.

(c) Nothing in this section shall preclude a permit from being reviewed and modified at any time during its term.

History. Acts 1979, No. 406, § 5; 1985, No. 920, § 1; A.S.A. 1947, § 82-4205; Acts 1999, No. 1164, § 92.

8-7-221. Permits — Revocation.

Any permit issued under §§ 8-7-215 — 8-7-220 shall be subject to revocation for failure of the permittee to comply with the terms and conditions of the permit, the rules and regulations of the Arkansas Department of Environmental Quality applicable thereto, or the provisions of this subchapter.

History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205.

8-7-222. Permits — Hearing upon denial, revocation, or modification.

Any person who is denied a permit by the Director of the Arkansas Department of Environmental Quality or who has such permit revoked or modified shall be afforded an opportunity for a hearing by the Arkansas Pollution Control and Ecology Commission in connection therewith upon written application made within thirty (30) days after service of notice of the denial, revocation, or modification.

History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205.

8-7-223. Location of landfill.

No hazardous waste landfill disposal facility off the site of generation shall be located within one-half (½) mile of any occupied dwelling unless the applicant shall affirmatively demonstrate and the Arkansas Department of Environmental Quality shall specifically find that, because of the nature and amounts of the materials to be placed in such hazardous waste landfill disposal facility, a lesser distance will provide adequate margins of safety even under abnormal operating conditions.

History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205.

8-7-224. Rules for transporting hazardous waste.

(a)(1) Following notice and public hearing, the Arkansas Department of Transportation, in consultation with the Arkansas Department of Environmental Quality, shall issue rules and regulations for the transportation of hazardous waste.

(2) The rules and regulations shall be consistent with applicable rules and regulations issued by the United States Department of Transportation and with any rules, regulations, and standards issued by the Arkansas Department of Environmental Quality under this subchapter.

(b) The provisions of this section shall apply equally to those persons transporting hazardous waste generated by others and to those transporting hazardous waste they have generated themselves, or combinations thereof.

History. Acts 1979, No. 406, § 7; A.S.A. 1947, § 82-4207; Acts 2017, No. 707, § 11.

Amendments. The 2017 amendment redesignated (a) as (a)(1) and (a)(2); substituted “Department of Transportation” for “State Highway and Transportation Department” in (a)(1); and substituted “under” for “pursuant to” in (a)(2).

8-7-225. Records and examinations.

(a) The owner or operator of any hazardous waste management facility or site shall notify the Arkansas Department of Environmental Quality as to hazardous waste management activities in accordance

with the requirements of this subchapter and regulations, permits, and orders issued under this subchapter, and shall establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment or methods, take such samples, perform such tests, and provide such other information to the department as the Director of the Arkansas Department of Environmental Quality may reasonably require.

(b) The department or any authorized employee or agent thereof may examine and copy any books, papers, records, or memoranda pertaining to the operation of the facility or site.

(c) The department or any authorized employee or agent thereof may enter upon any public or private property for the purpose of obtaining information or conducting surveys or investigations necessary or appropriate for the purposes of this subchapter.

(d)(1)(A) Any records, reports, or information obtained under this subchapter and any permits, permit applications, and related documentation shall be available to the public for inspection and copying.

(B) Upon a showing satisfactory to the director that the records, reports, permits, documentation, information, or any part thereof would, if made public, divulge methods or processes entitled to protection as trade secrets, the director shall consider, treat, and protect the records, reports, or information as confidential.

(2)(A) As necessary to carry out the provisions of this subchapter, information afforded confidential treatment may be transmitted under a continuing claim of confidentiality to other officers or employees of the state or of the United States if the owner or operator of the facility to which the information pertains is informed of the transmittal and if the information has been acquired by the department under the provisions of this subchapter.

(B) The provisions of subdivision (d)(2)(A) of this section shall not be construed to limit the department's authority to release confidential information during emergency situations.

(3) Any violation of this subsection shall be unlawful and constitute a misdemeanor.

History. Acts 1979, No. 406, § 11; 1983, No. 809, § 1; A.S.A. 1947, § 82-4211; Acts 1989, No. 643, § 8. **Cross References.** Misdemeanors, § 5-1-107.

8-7-226. Fees — Fund established.

(a) The Arkansas Pollution Control and Ecology Commission shall have authority to establish by regulation a schedule of fees to recover the costs of processing permit applications and permit renewal proceedings, on-site inspections and monitoring, the certification of personnel to operate hazardous waste treatment, storage, or disposal facilities, and other activities of Arkansas Department of Environmental Quality personnel which are reasonably necessary to assure that generators and transporters of hazardous waste and hazardous waste manage-

ment facilities are complying with the provisions of this subchapter and which reasonably should be borne by the transporter, generator, or owner or operator of the hazardous waste management facility.

(b) All fees collected pursuant to this section shall be dedicated to enabling the department to receive authorization to administer a hazardous waste management program in Arkansas pursuant to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984.

(c) The Hazardous Waste Permit Fund is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State. All fees collected under the provisions of this section shall be deposited into this fund.

(d) The commission is hereby authorized to promulgate such rules and regulations as are necessary to administer the fees, rates, tolls, or charges for services established by this section and is directed to prescribe such fees, rates, tolls, or charges for the services delivered by the department or its successor in such manner as may be necessary to support the programs of the department as directed by the Governor and the General Assembly.

History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205; Acts 1989, No. 643, § 9; 1991, No. 1235, § 1; 1993, No. 1254, §§ 3, 5; 1997, No. 1219, § 9; 1999, No. 1164, § 93.

Publisher's Notes. Acts 1993, No. 1254, § 5, codified as subsection (d) of this section, is also codified as §§ 8-1-103(5) and 8-1-105(c).

U.S. Code. The Hazardous and Solid

Waste Amendments of 1984, referred to in this section, are codified as 42 U.S.C. §§ 6901, 6902, 6905, 6912, 6915—6917, 6921—6931, 6933, 6935—6939, 6939a, 6941, 6943—6945, 6948, 6949a, 6956, 6962, 6972, 6973, 6976, 6979a, 6979b, 6982, 6984, 6991, and 6991a—6991i.

Cross References. Hazardous Waste Permit Fund, § 19-6-434.

8-7-227. Corrective action at permitted facilities and interim status facilities.

(a)(1) Any permit issued under this subchapter for any hazardous waste treatment, storage, or disposal facility shall require corrective action for all releases of hazardous waste or constituents from any solid waste management unit at the hazardous waste treatment, storage, or disposal facility seeking the permit under this subchapter regardless of the time at which waste was placed in the unit.

(2) The corrective action component of the permit shall contain:

(A) Schedules of compliance for the corrective action when the corrective action cannot be completed prior to issuance of the permit; and

(B) Assurances of financial responsibility for completing the corrective action.

(3) The corrective action component of the permit shall also require that corrective action be taken beyond the hazardous waste treatment, storage, or disposal facility boundary when necessary to protect human health and the environment unless the owner or operator of the

hazardous waste treatment, storage, or disposal facility concerned demonstrates to the satisfaction of the Director of the Arkansas Department of Environmental Quality that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake the action.

(b)(1) Whenever the director determines that there is or has been a release of hazardous waste into the environment from a facility authorized to operate under interim operating authority pursuant to this subchapter, the director may:

- (A) Issue an order requiring corrective action or such other response measure as the director deems necessary to protect human health or the environment; or
 - (B) Commence a civil action in the circuit court in the county in which the facility is located for appropriate relief, including a temporary or permanent injunction.
- (2)(A) Any order issued under this subsection:
- (i) Shall state with reasonable specificity the nature of the required corrective action or other response measure;
 - (ii) Shall specify a time for compliance; and
 - (iii) May include a suspension or revocation of the interim authority to operate under this subchapter.
- (B) If any person named in an order issued under this section fails to comply with the order, the director may assess a civil penalty in an amount not to exceed twenty-five thousand dollars (\$25,000) for each day of noncompliance with the order.

History. Acts 2005, No. 1166, § 1.

SUBCHAPTER 3 — ARKANSAS RESOURCE RECLAMATION ACT OF 1979

SECTION.	SECTION.
8-7-301. Title.	8-7-306. [Repealed.]
8-7-302. Legislative findings.	8-7-307. Unlawful actions — Acts or omissions of third parties.
8-7-303. Policy and purpose.	8-7-308. Powers and duties generally.
8-7-304. Definitions.	8-7-309. Appeals.
8-7-305. Exception to provisions.	

Effective Dates. Acts 1985, No. 922, § 7: Apr. 15, 1985. Emergency clause provided: “It has been found and it is hereby declared by the General Assembly that inequalities now exist in the regulation of hazardous waste management in this state as a result of current provisions of Act 1098 of 1979 (§ 8-7-301 et seq.), and that said provisions jeopardize the federal delegation of authority necessary to operate a state hazardous waste management

program in lieu of a federal program, thereby threatening the orderly development of the state’s resources in a manner which will protect the health and welfare of the people of the State of Arkansas. Therefore, an emergency is declared to exist, and this act, being necessary for the preservation of the public health, safety and welfare, shall take effect and be in force from the date of its approval.”

RESEARCH REFERENCES

Ark. L. Notes. Looney, Handling Administrative Proceedings Before the Arkansas Pollution Control and Ecology Department and Commission, 1988 Ark. L. Notes 23.

8-7-301. Title.

This subchapter may be cited as the “Arkansas Resource Reclamation Act of 1979”.

History. Acts 1979, No. 1098, § 1; A.S.A. 1947, § 82-4217.

8-7-302. Legislative findings.

The General Assembly finds and it is declared that:

(1) The disposal of hazardous waste, although currently necessary for certain forms of hazardous waste, represents an inefficient use of natural resources and may present long-term threats to the environment and to the public health and safety;

(2) Technically and economically feasible treatment methods are becoming increasingly available and offer the advantages of complete destruction of hazardous waste or the recovery and reclamation of some, if not all, constituents of hazardous waste;

(3) In addition to the recovery or reclamation of natural resources, treatment of hazardous waste reduces the volume of hazardous waste which must be disposed of and thereby reduces the associated threats to the environment and to the public health and safety;

(4) Interstate cooperation is necessary to assure that the volume of hazardous waste which must be disposed of within the state is reduced through a comprehensive program which encourages and, when appropriate, requires the treatment of hazardous waste; and

(5) The Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., authorizes the Arkansas Department of Environmental Quality to encourage the development of interstate agreements for the management of hazardous waste and to enter into such interstate agreements, with the concurrence of the Governor.

History. Acts 1979, No. 1098, § 2; A.S.A. 1947, § 82-4218.

8-7-303. Policy and purpose.

The General Assembly declares that it is the policy of this state and the purpose of this subchapter to:

(1) Establish a statewide program designed to protect society and the environment from the risks and burdens associated with the continued practice of disposing of those forms of hazardous waste which could otherwise be treated;

(2) Encourage the development and utilization of techniques which result in the recovery, reclamation, and conservation of resources of the state, including the reclamation and conservation or safeguarding of abandoned hazardous waste disposal sites;

(3) Encourage interstate cooperation and interstate agreements which would provide a requisite balance of disposal and treatment facilities among the states and which would reduce the amount of hazardous waste disposed of in the state, irrespective of the origin of the hazardous waste; and

(4) Coordinate the administration of this subchapter with the administration of the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., so as to further the purposes of both this subchapter and the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.

History. Acts 1979, No. 1098, § 3; 1985, No. 922, § 1; A.S.A. 1947, § 82-4219.

8-7-304. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(2) "Department" means the Arkansas Department of Environmental Quality;

(3) "Director" means the Director of the Arkansas Department of Environmental Quality;

(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water in whatever manner so that the hazardous waste or any constituent thereof might or might not enter the environment or be emitted into the air or discharged into any water, including groundwaters;

(5) "Facility" means any land and appurtenances thereon and thereto used for the treatment, storage, or disposal of hazardous waste;

(6) "Generation" means the act or process of producing waste materials;

(7)(A) "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may, in the judgment of the department:

(i) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise improperly managed.

(B) "Hazardous waste" includes, but is not limited to, those which are radioactive, toxic, corrosive, flammable, irritants, strong sensitiz-

ers, or which generate pressure through decomposition, heat, or other means;

(8) "Hazardous waste management" means the systematic control of the generation, collection, source separation, storage, transportation, processing, recovery, disposal, and treatment of hazardous waste;

(9) "Manifest" means the form used for identifying the quantity and composition and the origin, routing, and destination of hazardous waste during its transport;

(10) "Owners, operators, or other responsible parties" means and includes:

(A) Any person owning or operating a site or facility; or

(B) In the case of any inactive or abandoned facility or site, any person who owned, operated, or otherwise controlled the activities at the site or facility during the time that the site or facility was used to manage hazardous wastes;

(11) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company, state agency, government instrumentality or agency, institution, county, city, town, or municipal authority or trust, venture, or any other legal entity, however organized;

(12) "Site" means any real property located within the boundaries of the State of Arkansas contemplated or later acquired for the purpose of, but not limited to, landfills or other facilities to be used for treatment, storage, disposal, or generation of hazardous waste;

(13)(A) "Storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

(B) However, storage by means of burial shall be deemed to constitute disposal within the meaning of this subchapter;

(14) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal;

(15) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such hazardous waste or so as to render such hazardous waste less hazardous, safer for transport, amenable to recovery, amenable to storage, amenable to disposal, or reduced in volume; and

(16) "Treatment facility" means a location at which waste is subjected to treatment and may include a facility where waste has been generated.

History. Acts 1979, No. 1098, § 4; 1985, No. 922, § 2; A.S.A. 1947, § 82-4220; Acts 1999, No. 1164, § 94.

8-7-305. Exception to provisions.

This subchapter does not apply to an industrial waste treatment facility that discharges into a publicly owned treatment works if the industrial waste treatment facility and publicly owned treatment works comply with the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

History. Acts 1979, No. 1098, § 8; A.S.A. 1947, § 82-4224.

8-7-306. [Repealed.]

Publisher's Notes. This section, concerning penalties, was repealed by Acts 2015, No. 1264, § 7. The section was derived from Acts 1979, No. 1098, § 7; 1985, No. 922, § 5; A.S.A. 1947, § 82-4223.

8-7-307. Unlawful actions — Acts or omissions of third parties.

(a) It is unlawful for a person to:

(1) Violate a provision of this subchapter or of any rule, regulation, permit, or order issued under this subchapter;

(2) Transport hazardous waste into or out of the state, except as provided by regulations established by the Arkansas Department of Environmental Quality pursuant to the provisions of this subchapter; or

(3) Dispose of hazardous waste in the state except as provided by regulations established by the department pursuant to this subchapter.

(b)(1)(A) A person who violates this section upon conviction is guilty of an unclassified misdemeanor and shall be sentenced to not more than one (1) year in the county jail or a fine of not more than ten thousand dollars (\$10,000), or both.

(B) Each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(2)(A) A person who violates this section or the regulations issued under this subchapter, or who violates any condition of a permit issued under this subchapter, may be assessed a civil penalty by the Arkansas Pollution Control and Ecology Commission under administrative procedures and civil penalty regulations of the commission.

(B) The civil penalty shall not exceed twenty-five thousand dollars (\$25,000) for each violation.

(C) Each day of a continuing violation may be considered a separate violation for purposes of civil penalty assessments.

(D) However, a civil penalty assessment shall not be assessed until the person charged with the violation has been given the opportunity for a hearing on the violation under §§ 8-4-218, 8-4-219, and 8-4-221.

(c) A person is not liable for violating a provision of this subchapter or of any rule, regulation, permit, or order issued under this subchapter if the violation was caused solely by the acts or omissions of a third party.

History. Acts 1979, No. 1098, § 6; 1985, No. 922, § 4; A.S.A. 1947, § 82-4222; Acts 1989, No. 260, § 6; 2015, No. 1264, § 8.

Amendments. The 2015 amendment rewrote the introductory language of (a);

substituted “Violate” for “To violate any” in (a)(1); in (a)(2), deleted “To” at the beginning and substituted “or” for “and” at the end; deleted “To” at the beginning of (a)(3); inserted (b); redesignated former (b) as (c); and rewrote (c).

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Water and Environmental Law, 12 U. Ark. Little Rock L.J. 665.

8-7-308. Powers and duties generally.

The Arkansas Department of Environmental Quality shall have the following powers and duties:

(1) To enter into such agreements or compacts between one (1) or more states or with the United States Government as may be necessary and appropriate to effectuate a program consistent with the purposes of this subchapter if these agreements or compacts first receive the approval of the Governor;

(2) To adopt such regulations as may be necessary and appropriate to enforce within the state the terms of any interstate agreement or compact developed pursuant to the provisions of this subchapter;

(3) To promote the purposes of this subchapter and to effectuate and implement interstate agreements by imposing reasonable conditions on permits issued under this subchapter and the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., and the regulations promulgated under this subchapter and the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.;

(4) To prohibit, by regulation or by condition of permit, the disposal of any hazardous waste within the state unless the owner or custodian of the hazardous waste can demonstrate to the reasonable satisfaction of the Director of the Arkansas Department of Environmental Quality that it is technically or economically infeasible for the hazardous waste to be treated;

(5) To issue, continue in effect, revoke, modify, or deny, under such terms as the department or the General Assembly may prescribe, permits for the establishment, construction, operation, or maintenance of hazardous waste treatment or disposal facilities;

(6) To adopt and enforce regulations which would require the owners, operators, or other responsible parties of inactive or abandoned disposal sites to undertake such actions as are reasonable to prevent environmental contamination;

(7) To receive federal and private funds for the purpose of securing or reclaiming abandoned hazardous waste disposal sites in an environmentally safe manner; and

(8) To encourage and to participate in studies, projects, and agreements for the purpose of identifying and evaluating improvements in hazardous waste treatment and disposal techniques.

History. Acts 1979, No. 1098, § 5; 1985, No. 922, § 3; A.S.A. 1947, § 82-4221.

8-7-309. Appeals.

Appeal of the Arkansas Pollution Control and Ecology Commission's decision may be taken in accordance with the appellate procedure specified in §§ 8-4-222 — 8-4-229.

History. Acts 1979, No. 1098, § 7; 1985, No. 922, § 5; A.S.A. 1947, § 82-4223.

SUBCHAPTER 4 — EMERGENCY RESPONSE FUND ACT

SECTION.

8-7-401 — 8-7-421. [Repealed.]

8-7-401 — 8-7-421. [Repealed.]

Publisher's Notes. This subchapter, concerning the Emergency Response Fund Act, was repealed by Acts 2005, No. 1824, § 4. The subchapter was derived from the following sources:

8-7-401. Acts 1985, No. 452, § 1; A.S.A. 1947, § 82-4701.

8-7-402. Acts 1985, No. 452, § 2; A.S.A. 1947, § 82-4702.

8-7-403. Acts 1985, No. 452, §§ 3, 7; A.S.A. 1947, §§ 82-4703, 82-4707; Acts 1989, No. 260, § 5; 1999, No. 1164, §§ 95, 96.

8-7-404. Acts 1985, No. 452, § 11; A.S.A. 1947, § 82-4711.

8-7-405. Acts 1985, No. 452, § 10; A.S.A. 1947, § 82-4710.

8-7-406. Acts 1985, No. 452, § 9; A.S.A. 1947, § 82-4709.

8-7-407. Acts 1985, No. 452, § 7; A.S.A. 1947, § 82-4707.

8-7-408. Acts 1985, No. 452, § 5; A.S.A. 1947, § 82-4705; Acts 1987, No. 761, § 1.

8-7-409. Acts 1985, No. 452, § 5; A.S.A. 1947, § 82-4705; Acts 1989, No. 260, § 3.

8-7-410. Acts 1985, No. 452, § 4; A.S.A. 1947, § 82-4704; Acts 1997, No. 309, § 3; 1999, No. 140, § 1.

8-7-411. Acts 1985, No. 452, §§ 2, 5; A.S.A. 1947, §§ 82-4702, 82-4705; Acts 1995, No. 114, § 1.

8-7-412. Acts 1985, No. 452, § 6; A.S.A. 1947, § 82-4706.

8-7-413. Acts 1985, No. 452, § 7; A.S.A. 1947, § 82-4707.

8-7-414. Acts 1985, No. 452, § 7; A.S.A. 1947, § 82-4707.

8-7-415. Acts 1985, No. 452, § 7; A.S.A. 1947, § 82-4707; Acts 1991, No. 516, § 2; 1999, No. 1164, § 97.

8-7-416. Acts 1985, No. 452, § 7; A.S.A. 1947, § 82-4707.

8-7-417. Acts 1985, No. 452, § 8; A.S.A. 1947, § 82-4708; Acts 1988 (3rd Ex. Sess.), No. 15, § 1.

8-7-418. Acts 1985, No. 452, § 7; A.S.A. 1947, § 82-4707.

8-7-419. Acts 1985, No. 452, § 9; A.S.A. 1947, § 82-4709.

8-7-420. Acts 1987, No. 761, § 2.

8-7-421. Acts 2001, No. 449, § 1.

SUBCHAPTER 5 — REMEDIAL ACTION TRUST FUND ACT

SECTION.

8-7-501. Title.

8-7-502. Legislative intent — Purposes.

8-7-503. Definitions.

8-7-504. Penalties.

SECTION.

8-7-505. Unlawful acts.

8-7-506. Regulations — Administrative procedure.

8-7-507. Compliance of federal and state

SECTION.

- entities.
- 8-7-508. Remedial and removal authority of the department.
- 8-7-509. Hazardous Substance Remedial Action Trust Fund.
- 8-7-510. Federal actions or compensation not to be duplicated.
- 8-7-511. Furnishing of information.
- 8-7-512. Liability for costs — Immunity from liability.
- 8-7-513. Apportionment of costs.
- 8-7-514. Recovery of expenditures generally.
- 8-7-515. Recovery of expenditures — Limitations.

SECTION.

- 8-7-516. Liens for expenditures and value of improvements.
- 8-7-517. Punitive damages.
- 8-7-518. Fees on the generation of hazardous waste.
- 8-7-519. Appeals.
- 8-7-520. Contribution.
- 8-7-521. Site access for remedial or removal action.
- 8-7-522. Liability for actions relating to remedial actions.
- 8-7-523. [Repealed.]
- 8-7-524. Recycling transactions — Definitions.
- 8-7-525. Appropriation.

Cross References. Emergency services, § 12-75-101 et seq.

Effective Dates. Acts 1985, No. 479, § 16: Mar. 21, 1985. Emergency clause provided: "It has been found, and is declared by the General Assembly of Arkansas, that a great need exists to provide funding for state government response to release of hazardous substances into the environment of the state that threaten the public health and welfare. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in force from the date of its approval."

Acts 1987, No. 380, § 3: Apr. 23, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the annual fees currently assessed persons who generate hazardous waste in the State or accept hazardous wastes generated outside the State for treatment, storage or disposal in the State are based on weight alone; that a fee based on weight alone does not take into consideration many factors which should be given consideration in determining fair and equitable fees for generating or accepting hazardous wastes in the State for disposal, treatment or storage; that this Act is designed to authorize the Pollution Control and Ecology Commission to set such fees, within a prescribed maximum based on all relevant factors and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preserva-

tion of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1988 (3rd Ex. Sess.), No. 15, § 4: Feb. 9, 1988. Emergency clause provided: "It is hereby found and determined by the General Assembly that FHLMC (Freddie Mac) has indicated that loans in Arkansas may be jeopardized due to lien provisions contained in the Emergency Response Fund Act; that this matter needs immediate clarification in order to insure that monies are available to the people of Arkansas for economic development. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 441, § 6: Mar. 9, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that there are numerous hazardous substance sites in this state which pose a threat to the public health, welfare and safety of the citizens of this state and to the environment. In order to promptly address these sites it is imperative that this act be adopted to encourage maximum participation from the private sector. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 1041, § 7: Apr. 1, 1999. Emergency clause provided: "It is hereby

found and determined by the Eighty-second General Assembly that the laws of this state concerning the assessment of fees for the generation of hazardous waste which is managed in a totally enclosed treatment facility, an elementary neutralization unit, or a wastewater treatment unit are inequitable in that not all such management activities are assessed and the methodology of calculating the volume of waste generated is not uniform. Further, the fees are duplicative of fees assessed by the Water Division for the same activities when an NPDES or UIC Permit has been issued to authorize disposal of such wastes after treatment. Further, the assessment of such fees for activities such as the management in a totally enclosed treatment facility, an elementary neutralization unit, or a wastewater treatment unit can have the effect of discouraging the type of management activities that are proper and acceptable for such wastes. Further, the department will be issuing statements for hazardous waste generation activities in March of 1999 for 1998 hazardous waste activities, and this bill is necessary to avoid the assessment of unnecessary fees for 1998 hazardous waste activities and avoid disruption of the hazardous waste management program. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it

shall become effective on the date the last house overrides the veto.”

Act 2005, No. 1824, § 20: July 1, 2005. Emergency clause provided: “The General Assembly of the State of Arkansas hereby finds and determines that the decision of the Arkansas Supreme Court in *Arkansas Department of Environmental Quality v. Brighton Corp.* 352 Ark. 396, 102 S.W.3d 458 (2003), has raised questions regarding the factual proof required to establish a claim for cost recovery under the Arkansas Remedial Action Trust Fund Act and regarding the retroactivity of the statute. The General Assembly further finds and determines that the doubts raised by the decision in the Brighton case have created substantial uncertainty regarding the enforcement authority of the Arkansas Department of Environmental Quality and the rights and responsibilities of private parties under the Arkansas Remedial Action Trust Fund Act, all of which require urgent resolution. Therefore, an emergency is declared to exist; and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005, and shall apply retroactively.”

Acts 2011, No. 1011, § 8: July 1, 2011. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that lead and lead-based paint have been determined to be a human health concern posing an immediate danger to children, families, and the environment; and that this act is immediately necessary to prevent irreparable harm to children in this state. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2011.”

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Water and Environmental Law, 12 U. Ark. Little Rock L.J. 665.

8-7-501. Title.

This subchapter may be known and may be cited as the “Remedial Action Trust Fund Act”.

History. Acts 1985, No. 479, § 1; A.S.A. 1947, § 82-4712.

CASE NOTES

Cited: *Grisham v. Commercial Union Ins. Co.*, 927 F.2d 1039 (8th Cir. 1991).

8-7-502. Legislative intent — Purposes.

(a) It is the intent of the General Assembly to provide the state with the necessary authority and funds to investigate, control, prevent, abate, treat, or contain releases of hazardous substances necessary to protect the public health and the environment, including funds required to assure payment of the state's participation in response actions pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, and to encourage the reduction of hazardous waste generation.

(b) The purpose of this subchapter is to encourage privately funded remedial action and to clarify that persons who have undertaken remedial action at a hazardous substance site in response to an action initiated by the Arkansas Department of Environmental Quality pursuant to § 8-7-508 may obtain contribution from any other person who is liable for remediation of the hazardous substance site.

(c) A further purpose of this subchapter is to clarify the General Assembly's intent to provide the department with the necessary funds for remedial action at a hazardous substance site, recognizing that both public and private funds must be expended to implement remedial action at the hazardous substance sites which exist in this state. Costs and expenses for remedial action, whether expended by the department or by any person liable for the hazardous substance site, are legal damages to persons liable to the state and to persons liable to any other person for contribution, whether the liability arises by voluntary compliance with this subchapter pursuant to an order from or settlement with the department, or by suit for injunctive relief, declaratory judgment, contribution, damages, or restitution, and whether the suit is brought by the state or by any party authorized to bring a suit for relief under this subchapter.

(d) The General Assembly expressly intends that the provisions of this subchapter shall apply retroactively.

(e) A further purpose of this act is to:

(1) Provide the state with the authority necessary to protect the public's health and safety and the environment from releases or threatened releases of hazardous substances;

(2) Provide emergency response capabilities necessary to promptly contain, control, or remove hazardous substances resulting from spills or accidental releases; and

(3)(A) Provide the state with the authority necessary to fund site assessments at any one (1) or more of the following:

(i) Abandoned industrial, commercial, and agricultural sites or residential properties as stated in § 8-7-1101 et seq. for written requests from quasi-governmental agencies, county government, school districts, and planning and development districts if the persons do not hold title at the time of the written requests; or

(ii) Potentially contaminated sites when a letter of intent is signed and available federal funds are exhausted.

(B) The provisions concerning site assessments under §§ 8-7-504(a) and (b), 8-7-505, 8-7-508, 8-7-509(e) and (f), and 8-7-516 shall not apply under this subdivision (e)(3).

History. Acts 1985, No. 479, § 2; A.S.A. 1947, § 82-4713; Acts 1989, No. 441, § 1; 2005, No. 1824, § 2; 2017, No. 1073, § 1.

Amendments. The 2017 amendment added (e)(3).

Meaning of “this act”. Acts 2005, No. 1824, codified as 8-4-103, 8-6-204, 8-7-204, 8-7-402 — 8-7-421 [repealed], §§ 8-7-502,

8-7-503, 8-7-508, 8-7-509, 8-7-512, 8-7-514 — 8-7-517, 8-7-519, 8-7-521, 8-7-525, 19-5-929 [repealed], and 20-27-1002.

U.S. Code. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in this section, is codified primarily as 42 U.S.C. § 9601 et seq.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Julian & Schlumberger, Insurance Coverage for Environmental Clean-Up Costs Under

Comprehensive General Liability Policies, 19 U. Ark. Little Rock L.J. 57.

CASE NOTES

ANALYSIS

In General.
Air or Water Pollution.
Causes of Action.

In General.

This subchapter was enacted by the General Assembly in 1985 to provide the state, through its environmental agencies, with the necessary authority and funds to investigate, control, prevent, abate, treat, or contain releases of hazardous substances, and, among other things, to disburse funds required to assure payment of the state’s participation in response to environmental actions taken by the federal government, specifically pursuant to the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.). *Gurley v. Mathis*, 313 Ark. 412, 856 S.W.2d 616 (1993).

This subchapter is an extension of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.). *Gurley*

v. Mathis, 313 Ark. 412, 856 S.W.2d 616 (1993).

The Remedial Action Trust Fund was created by the General Assembly to meet the ten percent state contribution required by Congress before the Superfund monies could be expended to clean up a hazardous waste site under 42 U.S.C. § 9604(c). *Gurley v. Mathis*, 313 Ark. 412, 856 S.W.2d 616 (1993).

Air or Water Pollution.

There is no reference in this subchapter to air or water pollution as that term is defined in Chapter 4 of this title, and thus no explicit legislative intent that damage to the state’s natural resources be covered under this subchapter. *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

Causes of Action.

This subchapter is primarily designed to obtain costs and expenses for remedial action at hazardous substances sites, and does not provide a cause of action for natural resource damages. *Arkansas ex*

rel. Bryant v. Dow Chem. Co., 981 F. Supp. 1170 (E.D. Ark. 1997).

8-7-503. Definitions.

As used in this subchapter:

(1) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(2) "Department" means the Arkansas Department of Environmental Quality;

(3) "Director" means the Director of the Arkansas Department of Environmental Quality;

(4) "Federal act" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510;

(5) "Fund" means the Hazardous Substance Remedial Action Trust Fund created by this subchapter;

(6) "Hazardous substance" means:

(A) As of March 21, 1985, any:

(i) Substance designated pursuant to § 311(b)(2)(A) of the Federal Water Pollution Control Act, 33 U.S.C. § 1321(b)(2)(A);

(ii) Element, compound, mixture, solution, or substance designated pursuant to § 102 of Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9602;

(iii) Hazardous waste, including polychlorinated biphenyls, as defined by the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., and the regulations promulgated thereunder;

(iv) Toxic pollutant listed under § 307(a) of the Federal Water Pollution Control Act, 33 U.S.C. § 1317(a);

(v) Hazardous air pollutant listed under § 112 of the Clean Air Act, 42 U.S.C. § 7412; and

(vi) Hazardous chemical substance or mixture regulated under § 7 of the Toxic Substances Control Act, 15 U.S.C. § 2606; and

(B) Any other substance or pollutant designated by regulations of the commission promulgated under this subchapter;

(7) "Hazardous substance sites" means any sites or facilities where hazardous substances have been disposed of or from which there is a release or threatened release of hazardous substances;

(8) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, venture, state or federal government or agency, quasi-governmental agency, county government, school district, and planning and development district, or any other legal entity, however organized;

(9) "Releases of hazardous substances" means any spilling, leaking, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of hazardous substances into the environment;

(10) "Remedial action" means action necessary to effect permanent control, abatement, prevention, treatment, or containment of releases and threatened releases, including the removal of hazardous sub-

stances from the environment when removal is necessary to protect public health and the environment. Such actions are intended to include investigations designed to determine the need for and scope of remedial action and such planning, legal, fiscal, economic, engineering, geological, technical, or architectural studies as necessary to plan and direct remedial actions, to recover the cost thereof, and to enforce the provisions of this subchapter;

(11) "Removal action" means:

(A) The necessary cleanup or removal of a released hazardous substance from the environment;

(B) Necessary actions taken in the event of a threatened release of a hazardous substance into the environment;

(C) Actions necessary to monitor, test, analyze, and evaluate a release or threatened release of a hazardous substance;

(D) Disposal or processing of removed material; or

(E) Other actions necessary to prevent, minimize, or mitigate damage to the public health or welfare or the environment that may otherwise result from a release or threatened release;

(12) "Threatened release" means, for the purpose of this subchapter, any situation in which a sudden or nonsudden release of hazardous substances can be reasonably expected unless prevented by change of operation or installation or construction of containment or treatment devices or by removal action or other remedial action; and

(13) "Treatment", "storage", "disposal", "generation", and "hazardous waste" mean the same as provided in § 8-7-203 and the regulations promulgated pursuant to the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.

History. Acts 1985, No. 479, § 3; A.S.A. 1947, § 82-4714; Acts 1995, No. 125, § 2; 1997, No. 1042, § 12(a); 1999, No. 1164, §§ 98, 99; 2005, No. 1824, § 8; 2017, No. 1073, § 2.

A.C.R.C. Notes. Acts 1995, No. 125, § 1, provided: "The General Assembly finds and declares as follow:

"(1) The redevelopment of abandoned industrial sites should be encouraged as a sound land use management policy to prevent the needless development of prime farmland, open space and natural and recreation areas and to prevent urban sprawl;

"(2) The redevelopment of abandoned industrial sites should be encouraged so that these sites can be returned to useful, tax producing properties to protect existing jobs and provide new job opportunities;

"(3) Persons interested in redeveloping abandoned industrial sites should have a method of determining what their legal

liabilities and cleanup responsibilities will be as they plan the reuse of abandoned sites;

"(4) Incentives should be put in place to encourage prospective purchasers to voluntarily develop and implement cleanup plans of abandoned industrial sites without the use of taxpayer funds or the need for adversarial enforcement actions by the Arkansas Department of Pollution Control and Ecology;

"(5) The Arkansas Department of Pollution Control and Ecology now routinely, through its permitting policies, determines when contamination will and will not pose unacceptable risks to public health or the environment and similar concepts are used in establishing cleanup policies for abandoned industrial sites;

"(6) Parties and persons responsible under law for pollution at industrial sites should perform remedial responses which are fully consistent with existing requirements; and

“(7) As an incentive to promote the redevelopment of abandoned industrial sites, persons not responsible for preexisting pollution at or contamination on industrial sites should meet alternative cleanup requirements if they acquire title after fully disclosing the nature of conditions at the site and declaring and committing to a specified future land use of the site.”

Amendments. The 2017 amendment inserted “quasi-governmental agency, county government, school district, and planning and development district” in (8).

U.S. Code. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, is codified primarily as 42 U.S.C. § 9601 et seq.

8-7-504. Penalties.

(a)(1) Any person who commits any unlawful act under this subchapter shall be guilty of a misdemeanor and upon conviction shall be subject to imprisonment for not more than one (1) year or a fine of not more than ten thousand dollars (\$10,000) or to both a fine and imprisonment.

(2) Each day or part of a day during which such violation is continued or repeated shall constitute a separate offense.

(b) Any person who violates any provision of this subchapter or commits any unlawful act under this subchapter shall be subject to:

(1) A civil penalty in such amount as the Director of the Arkansas Department of Environmental Quality shall find appropriate, not to exceed twenty-five thousand dollars (\$25,000) per day of the violation;

(2) The payment of any expenses reasonably incurred by the state in removing, correcting, or terminating any adverse effects resulting therefrom, including the cost of the investigation, inspection, or survey establishing the violation or unlawful act; and

(3) The payment to the state of reasonable compensation of any actual damage resulting therefrom.

(c) One-half (½) of the civil penalties provided for in subdivision (b)(1) of this section, but not to exceed five hundred thousand dollars (\$500,000) in any one (1) calendar year and not to exceed four million dollars (\$4,000,000) in the aggregate, may be deposited into the Remedial Action Account in the Construction Assistance Revolving Loan Fund established pursuant to § 15-5-901, if so authorized by the director, and such moneys shall not be deposited into or deemed to be a part of the State Treasury for the purposes of Arkansas Constitution, Article 5, § 29, Arkansas Constitution, Article 16, § 12, Arkansas Constitution, Amendment 20, or any other constitutional or statutory provisions.

History. Acts 1985, No. 479, § 11; A.S.A. 1947, § 82-4722; Acts 1997, No. 1042, § 3.

8-7-505. Unlawful acts.

It shall be unlawful for any person:

(1) To violate any provision of this subchapter or any rule or regulation adopted under this subchapter;

(2) To knowingly make a false statement, representation, or certification in any report or other document filed or required by this subchapter or the rules and regulations adopted pursuant to this subchapter; or

(3) To violate any order issued by the Arkansas Department of Environmental Quality under this subchapter or any provision of such an order.

History. Acts 1985, No. 479, § 10;
A.S.A. 1947, § 82-4721.

8-7-506. Regulations — Administrative procedure.

The Arkansas Pollution Control and Ecology Commission shall adopt regulations under this subchapter necessary to implement or effectuate the purposes and intent of this subchapter, including, but not limited to, regulations affording any persons aggrieved by any order issued pursuant to this subchapter an opportunity for a hearing thereon and commission review of the action.

History. Acts 1985, No. 479, § 13; tion Control and Ecology Commission,
A.S.A. 1947, § 82-4724. hearings, § 8-4-212.

Cross References. Arkansas Pollu-

CASE NOTES

Cited: Gurley v. Mathis, 313 Ark. 412,
856 S.W.2d 616 (1993).

8-7-507. Compliance of federal and state entities.

Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the United States Government and the state government shall be subject to and comply with this subchapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under this section.

History. Acts 1985, No. 479, § 8; A.S.A.
1947, § 82-4719.

8-7-508. Remedial and removal authority of the department.

(a)(1) Upon finding that a hazardous substance site exists or may exist, the Arkansas Department of Environmental Quality, upon reasonable notice and after opportunity for hearing, may issue an order to any person liable for the site under § 8-7-512 if that person has caused

or contributed to the release or threatened release of hazardous substances at the hazardous substance site. This order shall require that such remedial actions be taken as are necessary to investigate, control, prevent, abate, treat, or contain any releases or threatened releases of hazardous substances from the hazardous substance site.

(2) The fact that such a hazardous substance site is or is not listed by the Arkansas Pollution Control and Ecology Commission pursuant to § 8-7-509(f) shall in no manner limit the authority of the department under this subchapter.

(b) The Director of the Arkansas Department of Environmental Quality or any employee or authorized agent of the department may enter upon any private or public property for the purpose of collecting information under this subchapter and for initiating and implementing remedial actions.

(c) The director is authorized to initiate and implement remedial actions under this subchapter pursuant to the provisions of § 8-7-509.

(d) In taking removal action or remedial actions pursuant to this subchapter, the department or any contractor of the department under this section shall not be required to obtain any state or local permit for the portion of any removal action or remedial action conducted pursuant to this subchapter entirely on site when the removal action or remedial action is otherwise carried out in compliance with the regulations of the department.

(e) The director is authorized to initiate and implement removal actions under this subchapter whenever there is a release or a threatened release of hazardous substances which may present an imminent and substantial endangerment to the public health, safety, or welfare or to the environment.

(f) Whenever the director has reason to believe that a release or threatened release of hazardous substances may present an imminent and substantial endangerment to the public health, safety, or welfare or to the environment, the director and the employees and the authorized representatives of the department shall have the right to enter upon any affected private or public property for the purpose of collecting information and for initiating and implementing appropriate removal or remedial actions.

(g) Removal actions are not authorized when the director has reasonable assurance that the person liable for a release or threatened release has committed to and is capable of initiating corrective and removal action in a timely manner and that the actions will achieve results equivalent to the results from removal action authorized in this section.

(h) Upon finding that a release or a threatened release of hazardous substances may present an imminent and substantial endangerment to the public health, safety, or welfare or to the environment, the director, without notice or hearing, may issue an order reciting the existence of such an imminent hazard and substantial endangerment and requiring that such removal actions be taken as he or she determines necessary

to protect the health and safety of any affected or threatened persons or the environment and to otherwise meet the emergency.

(i) The order of the director issued under subsection (h) of this section may include, but is not limited to, requiring any person responsible in whole or in part for the release or threatened release or any person in total or partial control of the site, facility, or transport vehicle from which the release or threatened release emanates, if that person has caused or contributed to the release or threatened release, to take such steps as are necessary to protect the public health and safety and the environment.

(j) The director is not authorized to expend in excess of two hundred fifty thousand dollars (\$250,000) on any single removal action without approval of the commission.

(k)(1) The orders issued under subsection (h) of this section may be issued verbally or in writing.

(2) If originally issued verbally, a written order shall be issued by the director confirming the verbal order as soon as it is reasonably possible to do so.

(l) Any person to whom an order issued under subsection (h) of this section is directed shall comply with the order immediately but, upon written request to the commission within ten (10) days of the order's being issued by the director, shall be afforded a hearing and administrative review of the order within ten (10) days after filing the written request.

(m) A person shall not be deemed to be liable for, responsible for, or to have caused or contributed to the release or threatened release of hazardous substances pursuant to any provision of this subchapter if the person merely provides financing or loans to another person or obtains title to property through foreclosure or through conveyance of property in total or partial satisfaction of a mortgage or other security interest in property.

History. Acts 1985, No. 479, § 6; A.S.A. 1947, § 82-4717; Acts 1987, No. 761, § 3; 1989, No. 260, § 4; 2005, No. 1824, § 9.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Water and Environmental Law, 12 U. Ark. Little Rock L.J. 665.

8-7-509. Hazardous Substance Remedial Action Trust Fund.

(a) The Hazardous Substance Remedial Action Trust Fund is created.

(b) The Hazardous Substance Remedial Action Trust Fund will be administered by the Director of the Arkansas Department of Environmental Quality, who shall authorize expenditures from the Hazardous Substance Remedial Action Trust Fund.

(c)(1) Any moneys remaining in the Emergency Response Fund [abolished] as of June 30, 2005, shall be transferred in their entirety to the Hazardous Substance Remedial Action Trust Fund.

(2) Beginning July 1, 2005, the Hazardous Substance Remedial Action Trust Fund shall consist of all moneys received as penalties under §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, 8-4-301 — 8-4-313, 8-6-201 — 8-6-214, 8-7-201 — 8-7-226, 8-7-504, and 20-27-1001 et seq.

(3) In addition to all moneys appropriated by the General Assembly to the Hazardous Substance Remedial Action Trust Fund, there shall be deposited into the Hazardous Substance Remedial Action Trust Fund:

(A) Any moneys received by the state as a gift or donation to the Hazardous Substance Remedial Action Trust Fund;

(B) All interest earned upon moneys deposited into the Hazardous Substance Remedial Action Trust Fund;

(C) All fees assessed under § 8-7-518;

(D) All costs recovered from the Emergency Response Fund [abolished];

(E) All punitive damages collected pursuant to § 8-7-517; and

(F) Any other moneys legally designated for the Hazardous Substance Remedial Action Trust Fund.

(4) In addition, there is authorized to be deposited into the Hazardous Substance Remedial Action Trust Fund all moneys recovered pursuant to § 8-7-514 and all moneys received as penalties pursuant to § 8-7-504.

(d)(1) Ten percent (10%) of the moneys collected for the Hazardous Substance Remedial Action Trust Fund after July 1, 1991, shall be deposited into the Environmental Education Fund. Total deposit of funds shall not exceed two hundred seventy-five thousand dollars (\$275,000) per fiscal year.

(2)(A) Ten percent (10%) of the moneys collected for the Hazardous Substance Remedial Action Trust Fund after July 1, 2017, may be used for conducting site assessments of potentially contaminated sites when a letter of intent has been signed and available federal funds are exhausted in accordance with § 8-7-1101 et seq.

(B) This amount shall not exceed five hundred thousand dollars (\$500,000) per fiscal year.

(3) The remaining moneys in the Hazardous Substance Remedial Action Trust Fund may be expended by the director as authorized by this subsection and subsection (e) of this section:

(A) For the costs and expenses reasonably necessary for the administration of this subchapter by the Arkansas Department of Environmental Quality;

(B) For the state share mandated by § 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9604(c)(3); and

(C) To provide for the investigation, identification, assessment, containment, abatement, treatment, or control, including monitoring and maintenance, of hazardous substance sites within the state. The

director may enter into the contracts and use the funds for those purposes directly associated with identification, investigation, containment, abatement, treatment, or control, including monitoring and maintenance, prescribed above, including:

- (i) Hiring of personnel;
- (ii) Purchasing, leasing, or renting of equipment; and
- (iii) Other necessary expenses related to the operation and implementation of this subchapter.

(e) The moneys in the Hazardous Substance Remedial Action Trust Fund may be expended by the director for removal actions, including:

- (1) The purchase of any commodities or services necessary in taking removal actions in connection with a release or threatened release; and
- (2) Reimbursement of all costs incurred by the department in taking removal actions in connection with a release or threatened release.

(f)(1) No expenditures from the Hazardous Substance Remedial Action Trust Fund, as authorized by subdivisions (d)(3)(B) and (C) of this section, shall be made prior to the approval by the Arkansas Pollution Control and Ecology Commission of a prioritized listing of hazardous substance sites at which remedial actions are authorized through the use of Hazardous Substance Remedial Action Trust Fund moneys. This listing shall be revised annually by the department and submitted to the commission for approval after public notice and opportunity for hearing.

(2) Upon a showing that a release of a hazardous substance at a hazardous substance site exists and will continue without expeditious remedial action, the commission may list the site on the prioritized listing pursuant to the procedures set out in § 8-4-202(e) prior to public notice and thereby authorize the director to expend funds pursuant to subdivision (d)(3)(C) of this section. Such an emergency listing need not be supported by a factual showing of irreparable harm or imminent and substantial endangerment.

(g)(1) Notwithstanding the provisions of §§ 19-6-108 and 19-6-601, grants to the state under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., and the Comprehensive Environmental Response, Compensation, and Liability Act, Pub. L. No. 96-510, as each may be amended from time to time, and otherwise from the United States Environmental Protection Agency received by the Treasurer of State from the United States Government are declared to be cash funds restricted in their use and dedicated and are to be used solely as authorized in this subchapter and the Arkansas Brownfield Revolving Loan Fund Act, § 15-5-1501 et seq.

(2) When received by the Treasurer of State, the cash funds shall not be deposited into or deemed to be a part of the State Treasury for the purposes of Arkansas Constitution, Article 5, § 29, Arkansas Constitution, Article 16, § 12, Arkansas Constitution, Amendment 20, or any other constitutional or statutory provisions.

(3) The Treasurer of State shall pay the cash funds to the Arkansas Development Finance Authority for deposit into the Brownfield Revolv-

ing Loan Fund established pursuant to the Arkansas Brownfield Revolving Loan Fund Act, § 15-5-1501 et seq., to be used for the purposes authorized by this subchapter and the Arkansas Brownfield Revolving Loan Fund Act, § 15-5-1501 et seq.

(4) Such federal grants transferred directly to the authority are declared to be cash funds restricted in their use and dedicated and to be used solely as authorized in this subchapter and the Arkansas Brownfield Revolving Loan Fund Act, § 15-5-1501 et seq.

History. Acts 1985, No. 479, §§ 4, 5; A.S.A. 1947, §§ 82-4715, 82-4716; Acts 1991, No. 746, § 2; 1991, No. 786, § 9; 1997, No. 1042, §§ 4, 5; 1999, No. 45, § 1; 2005, No. 1824, § 10; 2011, No. 1011, § 3; 2017, No. 1073, § 3.

A.C.R.C. Notes. The Emergency Response Fund, referred to in this section, was abolished by Acts 2005, No. 1824, §§ 4 and 18.

Amendments. The 2017 amendment

redesignated former (d) as (d)(1) and (d)(3); inserted present (d)(2); and inserted “assessment” in present (d)(3)(C).

U.S. Code. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is codified primarily as 42 U.S.C. § 9601 et seq.

Cross References. Environmental Education Fund, § 19-5-1027.

Hazardous Substance Remedial Action Trust Fund, § 19-5-930.

CASE NOTES

ANALYSIS

In General.

Prioritized Listing.

In General.

The Remedial Action Trust Fund was created by the General Assembly to meet the ten percent state contribution required by Congress before the Superfund monies could be expended to clean up a hazardous waste site under 42 U.S.C.

§ 9604(c). *Gurley v. Mathis*, 313 Ark. 412, 856 S.W.2d 616 (1993).

Prioritized Listing.

Placement by the Arkansas Pollution Control and Ecology Commission of a site on the Remedial Action Trust Fund Priority List is a rulemaking function rather than an adjudicative proceeding. *Gurley v. Mathis*, 313 Ark. 412, 856 S.W.2d 616 (1993).

8-7-510. Federal actions or compensation not to be duplicated.

No actions taken pursuant to this subchapter by the Arkansas Department of Environmental Quality shall duplicate federal actions, and no claims for the costs of response or other claims compensable under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, shall be compensable under this subchapter.

History. Acts 1985, No. 479, § 5; A.S.A. 1947, § 82-4716.

CASE NOTES

Cited: *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

8-7-511. Furnishing of information.

(a) For purposes of assisting in determining the need for remedial action in connection with a release or threat of release of hazardous substances under this subchapter or for enforcing the provisions of this subchapter, any person who stores, treats, or disposes of hazardous substances, or, if necessary to ascertain facts not available at the site or facility where the hazardous substances are stored, treated, or disposed of, any person who generates, transports, otherwise handles, or has handled hazardous substances shall, upon request of any officer or employee of the Arkansas Department of Environmental Quality, furnish information relating to the hazardous substance and permit the person at all reasonable times to have access to and copy all records relating to the hazardous substances and to inspect and obtain samples of any such hazardous substances or other materials.

(b) However, any information which would constitute a trade secret under § 4-75-601 et seq., obtained by the department or its employees in the administration of this subchapter, except emission data, shall be kept confidential.

(c) Any violation of this section shall be unlawful and constitute a misdemeanor.

History. Acts 1985, No. 479, § 12; A.S.A. 1947, § 82-4723. **Cross References.** Misdemeanors, § 5-1-107.

8-7-512. Liability for costs — Immunity from liability.

(a) Any of the following shall be liable to the state for all costs of remedial action or removal actions under this subchapter:

- (1) The owner and operator of a facility;
 - (2) Any person who, at the time of disposal of any hazardous substance, owned or operated a hazardous substance site;
 - (3) Any generator of hazardous substances who caused such a hazardous substance to be disposed of at a hazardous substance site or who causes a release or threatened release of the hazardous substances;
- or

(4) Any transporter of hazardous substances who causes a release or threatened release of the hazardous substances or who selected a hazardous substance site for disposal of the hazardous substances.

(b)(1) No person shall be liable under this subchapter for damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice at the direction of the Arkansas Department of Environmental Quality, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat of a release of a hazardous substance.

(2)(A) This subsection shall not preclude liability for damages as a result of gross negligence or intentional misconduct on the part of the person, nor shall this subsection preclude liability for damages and

costs of remedial action or removal action of any person liable for such damages and costs pursuant to subsection (a) of this section.

(B) For the purposes of subdivision (b)(2)(A) of this section, reckless, willful, or wanton misconduct shall constitute gross negligence.

(c)(1) A person taking remedial action or removal action under this subchapter as a contractor for the department shall not be liable under this subchapter or under any other state law to any person for injuries, costs, damages, expenses, or other liability, including, but not limited to, claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss resulting from a release or threatened release of hazardous substances.

(2) However, the provisions of this subsection shall not apply in case of a release that is caused by the conduct of the person taking remedial action or removal action that is negligent or grossly negligent or which constitutes intentional misconduct.

(d) A state employee or an employee of a political subdivision who provides services relating to remedial action or removal action while acting within the scope of his or her authority as a governmental employee shall have the same exemption from liability, subject to the other provisions of this section, as is provided to the removal action or remediation action contractor under subsection (c) of this section.

(e)(1) Nothing in subsection (c) or subsection (d) of this section shall affect the liability of any person under warranty under state or common law.

(2) Nothing in this subsection shall affect the liability of an employer taking remedial action or removal action to any employee of any such employer under any provision of law, including any provision of any law relating to workers' compensation.

History. Acts 1985, No. 479, § 8; A.S.A. 1947, § 82-4719; Acts 1987, No. 761, § 4; 1989, No. 441, § 2; 2005, No. 1824, § 3.

Cross References. Civil liability of those assisting at accidents, § 8-7-101.

Donation of property or equipment, immunity, § 12-75-125.

Emergency Management Assistance Compact, § 12-76-201 et seq.

Emergency responders, immunities and exemptions, § 12-75-128.

Exemption for requested assistance,

§ 16-120-401.

Good Samaritan law, § 17-95-101.

Immunity of state officers and employees — Status as employee, § 19-10-305.

Interstate Civil Defense and Disaster Compact, § 12-76-101 et seq.

Limitations on civil liability for volunteer health practitioners, § 12-87-111.

Tort liability — Immunity declared, § 21-9-301.

Workers' Compensation Law, § 11-9-101 et seq.

CASE NOTES

No Liability Shown.

Where the Arkansas Department of Environmental Quality's (DEQ) complaint was bereft of any factual allegations that, at the time of disposal, any of the customers of the corporation, which had improv-

erly disposed of hazardous substances, caused hazardous substances to be disposed of, and where the customers did not violate subdivisions (a)(3) and (4), the trial court properly dismissed DEQ's complaint pursuant to Ark. R. Civ. P. 8(a) and

12(b)(6). Ark. Dep't of Env'tl. Quality v. Brighton Corp., 352 Ark. 396, 102 S.W.3d 458 (2003) (decided under former version of section).

8-7-513. Apportionment of costs.

(a)(1) Any party found liable for any costs or expenditures recoverable under §§ 8-7-512, 8-7-514, 8-7-515, and 8-7-517 which establishes by a preponderance of the evidence that only a portion of such costs or expenditures are attributable to his or her actions shall be required to pay only for that portion.

(2) If the trier of fact finds the evidence insufficient to establish each party's portion of costs or expenditures, the court shall apportion the costs or expenditures, to the extent practicable, according to equitable principles, among the responsible parties.

(3) The Hazardous Substance Remedial Action Trust Fund shall pay any portion of the total expenditure in excess of the aggregate amount of costs or expenditures apportioned pursuant to this section.

(b)(1) In any action under this section, no responsible party shall be liable for more than that party's apportioned share of the amount expended from the fund for the hazardous substance site.

(2) The apportioned share shall be based on a responsible party's total volume of the hazardous substance at the hazardous substance site at the time of action taken under this subchapter.

(3) Any expenditures required by the provisions of this subchapter made by a responsible party, before or after suit, shall be credited toward any apportioned share.

History. Acts 1985, No. 479, § 8; A.S.A. 1947, § 82-4719.

8-7-514. Recovery of expenditures generally.

(a) After an expenditure from the Hazardous Substance Remedial Action Trust Fund for a removal action or remedial action, the Arkansas Department of Environmental Quality shall institute action to recover the expenditure from the person or persons liable for causing the release of the hazardous substance, including taking any appropriate legal action.

(b) Making use of any and all appropriate existing state legal remedies, the department or the Attorney General shall act to recover the amount expended by the state for any and all remedial action or removal actions from any and all parties identified as responsible parties for each hazardous substance.

(c) All moneys recovered from responsible parties pursuant to this section shall be deposited into the fund.

History. Acts 1985, No. 479, §§ 8, 9; 1991, No. 516, § 3; 1999, No. 1164, § 100; A.S.A. 1947, §§ 82-4719, 82-4720; Acts 2005, No. 1824, § 11.

8-7-515. Recovery of expenditures — Limitations.

No person, including the state, may recover under the authority of this section for any remedial action or removal action costs or damages resulting:

(1) From the application, in accordance with label directions of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act; or

(2) Solely from an act or omission of a third party or from an act of God or an act of war.

History. Acts 1985, No. 479, § 8; A.S.A. 1947, § 82-4719; 2005, No. 1824, § 12.

U.S. Code. The Federal Insecticide,

Fungicide, and Rodenticide Act, referred to in this section, is codified primarily as 7

U.S.C. § 136 et seq.

CASE NOTES**In General.**

The General Assembly, in enacting this subchapter, the Remedial Action Trust Fund Act, provided that no person, including the state, could recover under the authority of subdivision (2) of this section

for any remedial action costs or damages resulting solely from an act or omission of a third party, including customers of a corporation. Ark. Dep't of Env'tl. Quality v. Brighton Corp., 352 Ark. 396, 102 S.W.3d 458 (2003) (decision under prior law).

8-7-516. Liens for expenditures and value of improvements.

(a) If the owner of real property that is the location of a hazardous substance site upon which remedial action or removal action is performed under this subchapter is responsible, in whole or in part, for causing the release of the hazardous substance, there shall exist a lien against the real property for the moneys expended. If the expenditure results in an increase in the value of the real property, the lien shall also be for the increase in value.

(b) The lien shall be effective upon the filing by the Director of the Arkansas Department of Environmental Quality of a notice of lien with the circuit clerk in the county in which the real property is located.

(c) The lien obtained by this section shall not exceed the amount of expenditures, as itemized on an affidavit of expenditures attached to and filed with the notice of lien, and the increase in real property value as a result of the removal action, remedial action, or abatement action taken, as determined by an independent appraisal, a copy of which shall be attached to and filed with the notice of lien.

(d) The notice of lien shall be filed within thirty (30) days of the date of the last act performed on the real property by the Arkansas Department of Environmental Quality or its agent under this subchapter.

(e) Upon filing of the notice of lien, a copy with attachments shall be served upon the real property owner in the manner provided for enforcement of mechanics' or materialmen's liens.

(f) Any and all moneys recovered or reimbursed pursuant to this section through voluntary agreements or court orders shall be depos-

ited into and credited to the account of the Hazardous Substance Remedial Action Trust Fund.

History. Acts 1985, No. 479, § 9; A.S.A. 1947, § 82-4720; Acts 1988 (3rd Ex. Sess.), No. 15, § 2; 2005, No. 1824, § 13.

8-7-517. Punitive damages.

If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide remedial action or removal action upon order of the Arkansas Department of Environmental Quality, the person may be liable to the state for punitive damages in an amount equal to three (3) times the amount of any costs incurred by the state as a result of the failure to take proper action.

History. Acts 1985, No. 479, § 8; A.S.A. 1947, § 82-4719; 2005, No. 1824, § 14.

8-7-518. Fees on the generation of hazardous waste.

(a) On or before April 1 of each year, the following persons shall report the total amount of such hazardous waste generated or accepted to the Director of the Arkansas Department of Environmental Quality, except as provided in this section, on forms prescribed by the Arkansas Department of Environmental Quality:

(1) Every person who generated hazardous waste in Arkansas during the preceding year; and

(2) Every person who accepted for treatment, storage, or disposal in Arkansas during the preceding year hazardous waste generated outside the state.

(b)(1)(A) Except as provided in this section, there is assessed a fee to be collected by the department upon every person who generated hazardous waste in Arkansas or who accepted hazardous waste generated outside of the state which were subsequently received for treatment, storage, or disposal in Arkansas based upon the combined total of such hazardous waste as is required to be reported pursuant to subsection (a) of this section.

(B) The fees shall be calculated and paid according to a schedule to be adopted by regulation of the Arkansas Pollution Control and Ecology Commission, not to exceed a maximum of ten thousand dollars (\$10,000) annually per facility.

(2)(A) No person shall be required to pay fees based on the quantity of hazardous waste generated when such hazardous waste is managed in a totally enclosed treatment facility, an elementary neutralization unit, or a wastewater treatment unit, or when the hazardous waste is otherwise excluded by regulation from inclusion in a facility's determination of its compliance status or category as a generator.

(B) Any person who has paid such fees for hazardous waste generated in 1997 or later years shall be entitled to a refund upon application for a refund.

(C) The department shall calculate the amount of fee refund due and provide the applicant with a copy of the calculation.

(D) The department shall promptly pay any refund due from the Hazardous Substance Remedial Action Trust Fund.

(c) On or before July 1 of each year, each person subject to subsection (a) of this section shall pay to the department the fee required by subsection (b) of this section.

(d) To the extent practicable, the department shall coordinate the reporting requirements of this section with the reporting requirements of the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., and the regulations adopted under the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq. The content of the reporting shall be consistent with federal reporting requirements pursuant to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., in all respects with the exception of frequency.

(e) The department shall prepare annually a statement of all revenues collected by the fees under this section, as well as all other revenues to the fund, and all expenditures from the fund and obligations of the fund and the current balance in the fund.

History. Acts 1985, No. 479, § 7; A.S.A. 1947, § 82-4718; Acts 1987, No. 380, § 1; 1999, No. 1041, §§ 1-3.

8-7-519. Appeals.

An appeal may be taken from any final order of the Arkansas Department of Environmental Quality under this subchapter as provided in §§ 8-4-202, 8-4-210, 8-4-212—8-4-214, 8-4-218, 8-4-219, and 8-4-221 — 8-4-229 and in accordance with regulations promulgated by the Arkansas Pollution Control and Ecology Commission under this subchapter.

History. Acts 1985, No. 479, § 13; A.S.A. 1947, § 82-4724; 2005, No. 1824, § 15.

CASE NOTES

Cited: Gurley v. Mathis, 313 Ark. 412, 856 S.W.2d 616 (1993).

8-7-520. Contribution.

(a) Any person who has undertaken or is undertaking remedial action at a hazardous substance site in response to an administrative or judicial order initiated against such person pursuant to § 8-7-508 or

§ 8-7-1104(d) may obtain contribution from any other person who is liable for such hazardous substance site.

(b) Any person who has resolved all or a portion of his or her liability for a hazardous substance site by undertaking remedial action pursuant to an administrative or judicially approved settlement may obtain contribution from any person who is liable for such hazardous substance site and is not a party to the settlement.

(c) Those persons identified under § 8-7-512(a) shall be the persons liable for the hazardous substance site.

(d) An action for contribution may be brought in the circuit court of the county in which the hazardous substance site is located. In resolving contribution claims, the circuit court shall allocate the costs and expenses incurred or to be incurred by the contribution claimant or claimants for undertaking remedial action among all persons liable for the hazardous substance site, using such equitable factors as the circuit court determines are appropriate.

(e) Any person who has resolved all or a portion of his or her liability for a hazardous substance site by undertaking remedial action pursuant to an administrative or judicial proceeding or settlement shall not be liable for claims for contribution regarding matters addressed in the order or settlement which have been satisfactorily resolved. Such order or settlement does not discharge any of the other persons liable for the hazardous substance site who did not undertake or participate in the remedial action, unless the terms of the order or settlement so provide.

(f) This section shall apply to any claim for contribution initiated after March 9, 1989.

(g) No action for contribution may be commenced more than three (3) years after the date of the administrative or judicial order or settlement with respect to such remedial action. In any such action, the circuit court shall enter a declaratory judgment on liability that will be binding on any subsequent action to recover costs and expenses for remedial action.

(h) In any action for contribution, judicial review of any issues concerning the adequacy of the remedial action shall be limited to the administrative record to determine whether the selected remedy contained in the order or settlement is arbitrary or capricious, and then only such costs and expenses as are found to be inconsistent with those terms of the administrative or judicial order or settlement found to be arbitrary or capricious may be disallowed.

History. Acts 1989, No. 441, § 3; 1995, No. 125, § 3; 1997, No. 1042, § 2.

A.C.R.C. Notes. Acts 1995, No. 125, § 1, provided: "The General Assembly finds and declares as follow:

"(1) The redevelopment of abandoned industrial sites should be encouraged as a sound land use management policy to prevent the needless development of prime farmland, open space and natural and

recreation areas and to prevent urban sprawl;

"(2) The redevelopment of abandoned industrial sites should be encouraged so that these sites can be returned to useful, tax producing properties to protect existing jobs and provide new job opportunities;

"(3) Persons interested in redeveloping abandoned industrial sites should have a

method of determining what their legal liabilities and cleanup responsibilities will be as they plan the reuse of abandoned sites;

“(4) Incentives should be put in place to encourage prospective purchasers to voluntarily develop and implement cleanup plans of abandoned industrial sites without the use of taxpayer funds or the need for adversarial enforcement actions by the Arkansas Department of Pollution Control and Ecology;

“(5) The Arkansas Department of Pollution Control and Ecology now routinely, through its permitting policies, determines when contamination will and will not pose unacceptable risks to public health or the environment and similar

concepts are used in establishing cleanup policies for abandoned industrial sites;

“(6) Parties and persons responsible under law for pollution at industrial sites should perform remedial responses which are fully consistent with existing requirements; and

“(7) As an incentive to promote the redevelopment of abandoned industrial sites, persons not responsible for preexisting pollution at or contamination on industrial sites should meet alternative cleanup requirements if they acquire title after fully disclosing the nature of conditions at the site and declaring and committing to a specified future land use of the site.”

8-7-521. Site access for remedial or removal action.

(a) For purposes of responding to an administrative or judicial order or settlement entered pursuant to § 8-7-508, the owner or the operator of a facility that is a hazardous substance site, or any person who otherwise controls access to such a facility, shall provide access to the Arkansas Department of Environmental Quality, any employee of the department, or any other person, duly designated by the Director of the Arkansas Department of Environmental Quality, who undertakes such activities as are required to carry out the terms of the order or settlement.

(b) Any person who impedes or interferes with a person who is entitled to site access for the purpose of conducting remedial action or removal action at a hazardous substance site pursuant to the terms of an administrative or judicial order or settlement may be assessed a civil penalty by the department in an administrative proceeding or by the court in a judicial proceeding for a site access injunction of up to ten thousand dollars (\$10,000) per day that site access is impeded.

(c) Any person who knowingly impedes or interferes with a person who is entitled to site access for the purpose of conducting remedial action or removal action at a hazardous substance site pursuant to the terms of an administrative or judicial order or settlement shall be guilty of a misdemeanor, punishable by a fine of up to one thousand dollars (\$1,000) or imprisonment for up to one (1) year, or both.

History. Acts 1989, No. 441, § 3; 2005, No. 1824, § 16.

8-7-522. Liability for actions relating to remedial actions.

(a) No shareholder, director, or officer of a corporation or a grantor or trustee of a trust whose sole purpose, as stated in its articles of incorporation or its trust agreement, is to conduct remedial action at a hazardous substance site pursuant to an administrative or judicial

order or settlement under § 8-7-508 shall be liable to any person for any action of the corporation or trust reasonably related to the stated purpose of the corporation or trust.

(b) This section shall not apply to any action of the corporation or trust resulting from the gross negligence or intentional misconduct of a shareholder, director, or officer of said corporation, or a grantor or trustee of said trust.

(c) Nothing in this section shall be construed to alter the liability of any person for the hazardous substance site under this subchapter, nor shall the liability of any such person be expanded as a result of such person undertaking remedial action or serving as a shareholder, officer, or director of a corporation or as a grantor or trustee of a trust which undertakes remedial action pursuant to an administrative or judicial order or settlement under § 8-7-508.

History. Acts 1989, No. 441, § 3.

8-7-523. [Repealed.]

Publisher's Notes. This section, concerning applicability of this subchapter to a prospective purchaser, was repealed by

Acts 1997, No. 1042, § 12. The section was derived from Acts 1995, No. 125, § 4. For current law, see § 8-7-1101 et seq.

8-7-524. Recycling transactions — Definitions.

(a) The purposes of this section are:

(1) To promote the reuse and recycling of scrap material in Arkansas while protecting human health and the environment;

(2) To promote the goals of the Arkansas Pollution Prevention Act, § 8-10-201 et seq., and related Arkansas legislation intended to encourage recycling;

(3) To create greater equity in the statutory treatment of recycled material versus virgin materials;

(4) To remove the disincentives and impediments to recycling in Arkansas created as an unintended consequence of certain liability provisions contained in this subchapter; and

(5) To incorporate into this subchapter amendments to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, adopted by the United States Congress in 1999 in Pub. L. No. 106-113, thus ensuring that Arkansas law does not contain more stringent provisions than federal law.

(b)(1) As provided in subsections (c)-(f) of this section, a person who arranged for recycling of recyclable material shall not be liable under § 8-7-512(a)(3) or § 8-7-512(a)(4) with respect to the recyclable material.

(2) Nothing in this section shall be deemed to affect the liability of a person under § 8-7-512(a)(3) or § 8-7-512(a)(4) with respect to material that is not recyclable material as defined in subsection (c) of this section.

(c)(1) As used in this section, “recyclable material” means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber other than whole tires, scrap metal, or spent lead-acid batteries, spent nickel-cadmium batteries, and other spent batteries, as well as minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap.

(2) However, “recyclable material” does not include:

(A) Shipping containers of a capacity from thirty liters (30 l) to three thousand liters (3,000 l), whether intact or not, having any hazardous substance, but not metal bits and pieces or hazardous substance that form an integral part of the shipping container, contained on or adhering thereto; or

(B) Any item of material that contains polychlorinated biphenyls at a concentration in excess of fifty parts per million (50 ppm) or any new standard promulgated pursuant to applicable federal laws.

(d) Transactions involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber other than whole tires shall be deemed to be arranging for recycling of recyclable material, if the person who arranged for the transaction by selling recyclable material or otherwise arranging for the recycling of recyclable material can demonstrate by a preponderance of the evidence that all of the following criteria were met at the time of the transaction:

(1) The recyclable material met a commercial specification grade;

(2) A market existed for the recyclable material;

(3) A substantial portion of the recyclable material was made available for use as feedstock for the manufacture of a salable new product;

(4) The recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from virgin raw material;

(5) For transactions occurring ninety (90) days or more after the date of enactment of this section, the person exercised reasonable care to determine that the facility where the recyclable material was handled, processed, reclaimed, or otherwise managed by another person, i.e., a consuming facility, was in compliance with substantive, not procedural or administrative, provisions of any federal, state, or local environmental law or regulation or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with recyclable material; and

(6) As used in this subsection, “reasonable care” shall be determined using criteria that include:

(A) The price paid in the recycling transaction;

(B) The ability of the person to detect the nature of the consuming facility’s operations concerning its handling, processing, reclamation, or other management activities associated with recyclable material; and

(C)(i) The result of inquiries made to the appropriate federal, state, or local environmental agency regarding the consuming facili-

ty's past and current compliance with substantive, not procedural or administrative, provisions of any federal, state, or local environmental law or regulation or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material.

(ii) For the purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activity associated with the recyclable material shall be deemed to be a substantive provision.

(e)(1) Transactions involving scrap metal shall be deemed to be arranging for recycling, if the person who arranged for the transaction by selling recyclable material or otherwise arranging for the recycling of recyclable material can demonstrate by a preponderance of the evidence that at the time of the transaction the person:

(A) Met the criteria set forth in subsection (d) of this section with respect to the scrap metal;

(B) Was in compliance with any applicable regulations or standards regarding the storage, transport, management, or other activities associated with the recycling of scrap metal that the Arkansas Pollution Control and Ecology Commission promulgates after the enactment of this section and with regard to transactions occurring after the effective date of those regulations or standards; and

(C) Did not melt the scrap metal prior to the transaction.

(2) For purposes of subdivision (e)(1)(C) of this section, melting of scrap metal does not include the thermal separation of two (2) or more materials due to differences in their melting points, referred to as "sweating".

(3) Except for scrap metals that the United States Environmental Protection Agency or the commission excludes from this definition by regulation, as used in this subsection, "scrap metal" means:

(A) Bits and pieces of metal parts, such as bars, turnings, rods, sheets, or wire; or

(B) Metal pieces that may be combined together with bolts or soldering, such as radiators, scrap automobiles, or railroad box cars, which when worn or superfluous can be recycled.

(f) Transactions involving spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries shall be deemed to be arranging for recycling, if the person who arranged for the transaction by selling recyclable material or otherwise arranging for the recycling of recyclable material can demonstrate by a preponderance of the evidence that at the time of the transaction:

(1) The person:

(A) Met the criteria set forth in subsection (d) of this section with respect to the spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries, but did not recover the valuable components of such spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries; and

(B) With respect to transactions involving lead-acid batteries, was in compliance with applicable federal and Arkansas environmental regulations or standards, and any amendments thereto, regarding the storage, transport, management, or other activities associated with the recycling of spent lead-acid batteries;

(2) With respect to transactions involving nickel-cadmium batteries, federal and Arkansas environmental regulations or standards were in effect regarding the storage, transport, management, or other activities associated with the recycling of spent nickel-cadmium batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto; or

(3) With respect to transactions involving other spent batteries, federal and Arkansas environmental regulations or standards were in effect regarding the storage, transport, management, or other activities associated with the recycling of those other spent batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto.

(g)(1) The exemptions set forth in subsections (d)-(f) of this section shall not apply if the person:

(A) Had an objectively reasonable basis to believe at the time of the recycling transaction:

(i) That the recyclable material would not be recycled;

(ii) That the recyclable material would be burned as fuel, or for energy recovery or incineration; or

(iii) For transactions occurring before ninety (90) days after the date of the enactment of this section, that the consuming facility was not in compliance with a substantive, not procedural or administrative, provision of any federal, state, or local environmental law or regulation or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, or other management activities associated with the recyclable material;

(B) Had reason to believe that hazardous substances had been added to the recyclable material for purposes other than processing for recycling; or

(C) Failed to exercise reasonable care with respect to the management and handling of the recyclable material, including adhering to customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances.

(2) For purposes of this subsection, an objectively reasonable basis for belief shall be determined using criteria that include:

(A) The size of the person's business;

(B) Customary industry practices, including customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances;

(C) The price paid in the recycling transaction; and

(D) The ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation,

or other management activities associated with the recyclable material.

(3) For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with recyclable material shall be deemed to be a substantive provision.

(h) Nothing in this section shall be deemed to affect the liability of a person under § 8-7-512(a)(1) or § 8-7-512(a)(2).

(i) The commission is authorized to promulgate additional rules and regulations concerning this section.

(j) The exemptions provided in this section shall not affect any concluded judicial or administrative action or any pending judicial action initiated by the State of Arkansas before enactment of this section.

(k)(1) Any person who commences an action in contribution against a person who is not liable by operation of this section shall be liable to that person for all reasonable costs of defending that action, including all reasonable attorney’s and expert witness fees.

(2) As used in this subsection, “person” does not include an agency, board, commission, or department of the State of Arkansas.

(l) Nothing in this section shall affect:

(1) Liability under any other federal, Arkansas, or local statute or regulation promulgated pursuant to any such statute, including any requirements promulgated by the commission under the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.; or

(2) The ability of the commission to promulgate regulations under any other statute, including the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.

(m) Nothing in this section shall be construed to:

(1) Affect any defenses or liabilities of any person to whom subdivision (b)(1) of this section does not apply; or

(2) Create any presumption of liability against any person to whom subdivision (b)(1) of this section does not apply.

History. Acts 2001, No. 449, § 2.

A.C.R.C. Notes. Regarding references to “the enactment of this section” in (d)(5), (e)(1)(B), and (g)(1)(A)(iii), Acts 2001, No. 449 became effective August 13, 2001.

U.S. Code. The Comprehensive Envi-

ronmental Response, Compensation, and Liability Act of 1980, referred to in this section, is codified primarily as 42 U.S.C. § 9601 et seq. The 1999 amendments referred to in subdivision (a)(5) of this section are codified as 42 U.S.C. § 9627.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Environmental Law, 24 U. Ark. Little Rock L. Rev. 475.

8-7-525. Appropriation.

On or after July 1, 2005, any appropriation made payable from the Emergency Response Fund [abolished] shall be made payable from the Hazardous Substance Remedial Action Trust Fund.

History. Acts 2005, No. 1824, § 17. was abolished by Acts 2005, No. 1824,

A.C.R.C. Notes. The Emergency Response Fund, referred to in this section, §§ 4 and 18.

SUBCHAPTER 6 — LOW-LEVEL RADIOACTIVE WASTE

SECTION.

8-7-601. Definitions.

8-7-602. Disposal or storage in above-ground facilities.

SECTION.

8-7-603. Approval and issuance of permits.

8-7-604. Compact provisions controlling.

Cross References. Central Interstate Low-Level Radioactive Waste Compact, § 8-8-201 et seq.

8-7-601. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Above-ground facility” means any facility which has a substantial portion of its structure above ground; and

(2) “Low-level radioactive waste” means radioactive material that:

(A) Is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined in 42 U.S.C. § 2014(e)(2); and

(B) The United States Nuclear Regulatory Commission, consistent with existing law and in accordance with subdivision (2)(A) of this section, classifies as low-level radioactive waste.

History. Acts 1987, No. 562, § 1.

A.C.R.C. Notes. As enacted by Acts 1987, No. 562, § 1, subdivision (2)(A) of this section read in part: “(as defined in section 11e(2) of the Atomic Energy Act of 1954) (42 U.S.C. 2014(e)(2))”. However, the Atomic Energy Act of 1954, Pub. L. No. 83-703, did not contain a section 11e(2). It

did contain a section 11e, which defined “byproduct material”.

Cross References. Central Interstate Low-Level Radioactive Waste Compact, § 8-8-201 et seq.

Nuclear power generally, § 15-10-301 et seq.

8-7-602. Disposal or storage in above-ground facilities.

(a) In the event that low-level radioactive waste is required to be disposed of or stored in the State of Arkansas, the low-level radioactive waste shall be disposed of or stored only in an above-ground facility.

(b) An above-ground facility shall be so designed, constructed, and maintained as to prevent any accidental release of the low-level radioactive waste or any harmful substance in the above-ground facility

as a result of flooding, earthquakes, tornadoes, or other occurrences, to permit effective surveillance of the above-ground facility and the low-level radioactive waste in the above-ground facility, and to permit retrievability of any low-level radioactive waste stored in the above-ground facility for testing and other appropriate purposes.

History. Acts 1987, No. 562, § 2.

8-7-603. Approval and issuance of permits.

Neither the Arkansas Department of Environmental Quality nor any other agency or authority having the responsibility for approving and issuing permits for facilities for the disposal or storage of low-level radioactive waste in this state shall have the authority to approve or issue a permit for any facility unless the facility will fully comply with the requirements of this subchapter in all respects.

History. Acts 1987, No. 562, § 3; 1999, No. 1164, § 101.

8-7-604. Compact provisions controlling.

The implementation of this subchapter will not affect Arkansas’s continued membership in the Central Interstate Low-Level Radioactive Waste Compact Commission. If any provision of this subchapter is in conflict with the provisions of the Central Interstate Low-Level Radioactive Waste Compact, § 8-8-201 et seq., the provisions of the compact shall be controlling.

History. Acts 1987, No. 562, § 4.

SUBCHAPTER 7 — FEDERALLY LISTED HAZARDOUS SITES

SECTION.	SECTION.
8-7-701. Legislative intent.	8-7-705. Restrictions on use of hazardous substances.
8-7-702. Definitions.	
8-7-703. Interference by passive-site owners.	8-7-706. Ad valorem tax exemption.
8-7-704. Injunction.	8-7-707. Director and officer liability.

Effective Dates. Acts 1989, No. 350, § 11: Mar. 6, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that it is urgent that appropriate action be taken to promote and encourage implementation of response actions at federally listed hazardous sites; that this act is designed to promote and encourage appropriate re-

sponse actions at such sites as soon as possible and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Water and Environmental Law, 12 U. Ark. Little Rock L.J. 665.

8-7-701. Legislative intent.

The purpose of this subchapter is to encourage response actions at federally listed hazardous sites, to facilitate agreements related to property access and use to implement response actions at federally listed hazardous sites, to discourage activities that interfere with or obstruct such response actions, and to provide for the future use of federally listed hazardous sites after remediation.

History. Acts 1989, No. 350, § 1.

CASE NOTES**In General.**

The Remedial Action Trust Fund (see § 8-7-501 et seq.) was created by the General Assembly to meet the ten percent state contribution required by Congress

before the Superfund monies could be expended to clean up a hazardous waste site under 42 U.S.C. § 9604(c). *Gurley v. Mathis*, 313 Ark. 412, 856 S.W.2d 616 (1993).

8-7-702. Definitions.

As used in this subchapter:

(1) “Hazardous site” means any geographic area located, in whole or in part, in the State of Arkansas, access to or use of which is determined by the Arkansas Department of Environmental Quality to be necessary or appropriate to implement a response ordered by the President of the United States;

(2)(A) “Hazardous substance” means:

(i) Any substance designated pursuant to § 311(b)(2)(A) of the Federal Water Pollution Control Act, 33 U.S.C. § 1321(b)(2)(A);

(ii) Any element, compound, mixture, solution, or substance designated pursuant to § 102 of the Federal Water Pollution Control Act, 33 U.S.C. § 1252;

(iii) Any hazardous waste having the characteristics identified under or listed pursuant to § 3001 of the Solid Waste Disposal Act, 42 U.S.C. § 6921, but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by act of the United States Congress;

(iv) Any toxic pollutant listed under § 307(a) of the Federal Water Pollution Control Act, 33 U.S.C. § 1317(a);

(v) Any hazardous air pollutant listed under § 112 of the Clean Air Act, 42 U.S.C. § 7412; and

(vi) Any imminently hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to § 7 of the Toxic Substances Control Act, 15 U.S.C. § 2606.

(B) “Hazardous substance” does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subdivisions (2)(A)(i)-(vi) of this section.

(C) “Hazardous substance” does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or mixtures of natural gas and such synthetic gas;

(3) “Passive-site owner” means any person or entity owning any interest in any portion of a hazardous site, whether as owner, joint tenant, lessee, mortgagee, licensee, easement holder, mineral owner, or otherwise, and who has not entered into an agreement pursuant to 42 U.S.C. § 9622 for that hazardous site;

(4) “Response costs” means all amounts of removal or remedial action, including any costs and expenses incurred as a result of contractor delays, and other necessary amounts, including attorney’s fees and expenses reasonably incurred by any entity, including, but not limited to, the United States, the State of Arkansas, the governments of any other states, corporations, partnerships, and private citizens to investigate and secure a response action at a hazardous site; and

(5) “Settling party” means any person who has entered into an agreement with the United States pursuant to 42 U.S.C. § 9622.

History. Acts 1989, No. 350, § 2; 1999, No. 1164, § 102.

8-7-703. Interference by passive-site owners.

(a) No passive-site owner shall unduly impede or interfere with the efforts of a settling party to carry out an approved response action at a hazardous site.

(b) Any passive-site owner who violates subsection (a) of this section shall be liable for any response costs resulting from such violation.

History. Acts 1989, No. 350, §§ 3, 4.

8-7-704. Injunction.

The circuit court of the county in which the hazardous site is located shall have jurisdiction to enjoin any passive-site owner from unduly impeding or interfering with the implementation of a response action at such hazardous site.

History. Acts 1989, No. 350, § 5.

8-7-705. Restrictions on use of hazardous substances.

Construction on or at a hazardous site and the use of such hazardous site for any residential, commercial, manufacturing, industrial, or recreational purposes shall be prohibited unless and until the Arkansas Department of Environmental Quality issues an order terminating, wholly or partially, such prohibitions. Such order shall be subject to the procedural guidelines set forth in §§ 8-4-212 — 8-4-214 and 8-4-222 — 8-4-229 of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

History. Acts 1989, No. 350, § 6; 1999, No. 1164, § 103.

8-7-706. Ad valorem tax exemption.

Upon initiation of a response action at a hazardous site, such hazardous site shall be appraised at no value for purposes of any ad valorem taxes levied by any state, county, or local governmental authority unless and until the Arkansas Department of Environmental Quality issues an order wholly terminating the construction and use prohibitions established by § 8-7-705. This section shall not apply to the interest in such hazardous site owned by any passive-site owner or its successors and assigns that have violated § 8-7-703(a).

History. Acts 1989, No. 350, § 7; 1999, No. 1164, § 104.

8-7-707. Director and officer liability.

No director or officer of a corporation whose sole purpose as stated in its articles of incorporation is to own, implement a response action at, or hold one (1) or more hazardous sites, shall be liable to any person or entity for any action of the corporation reasonably related to the stated purpose of the corporation. This section shall not apply to any action of the corporation resulting from the gross negligence or willful misconduct of a director or officer of said corporation.

History. Acts 1989, No. 350, § 8.

SUBCHAPTER 8 — REGULATED SUBSTANCE STORAGE TANKS

SECTION.

- 8-7-801. Definitions.
- 8-7-802. Department and commission — Powers and duties.
- 8-7-803. Regulations generally.
- 8-7-804. Procedures generally.
- 8-7-805. License requirement.
- 8-7-806. Penalties — Enforcement.
- 8-7-807. Responsibility and liability of owner.

SECTION.

- 8-7-808. Regulated Substance Storage Tank Program Fund.
- 8-7-809. Corrective actions — Orders of director.
- 8-7-810. Insurance pools.
- 8-7-811. Trade secrets.
- 8-7-812. Subchapter controlling over other laws.
- 8-7-813. Registration.

SECTION.

8-7-814. Delivery prohibition.

8-7-815. [Repealed.]

SECTION.

8-7-816. Secondary containment.

8-7-817. Operator training.

A.C.R.C. Notes. Acts 1989, No. 172, § 14, provided: "If any provision of this act is found to conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act."

Effective Dates. Acts 1989, No. 172, § 17: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the effectiveness of this Act on July 1, 1989 is essential to the operation of the Underground Storage Tank Program created herein in the Department of Pollution Control and Ecology and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1991, No. 594, § 5: Mar. 18, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to the effective and efficient administration of the Regulated Storage Tank Program that this act be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Identical Acts 1995, Nos. 427 and 436, § 5: Feb. 24, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to the effective and efficient administration of the Regulated Storage Tank Program and the Petroleum Storage Tank Trust Fund that this act be given effect immediately. Therefore an emergency is hereby declared to exist and this act being

necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 1471, § 6: Apr. 10, 2001. Emergency clause provided: "It is hereby found and determined by the 83rd General Assembly that under present law a requirement for Petroleum Storage Tank Trust Fund eligibility is substantial compliance with applicable federal and state requirements. This eligibility requirement poses two significant problems. First, a storage tank owner or operator found ineligible for the Petroleum Storage Tank Trust Fund reimbursement is in reality penalized tens of thousands of dollars that are typically expended on investigation and/or remediation of petroleum releases. Second, the difficulty specifying the type of conduct that constitutes substantial compliance generates uncertainty as to whether the Petroleum Storage Tank Trust Fund will be available to owners or operators of such equipment. Consequently, it has been determined that instead of judging trust fund eligibility on the basis of substantial compliance, requiring owners and operators of storage tanks to annually complete and submit to the department self-inspection audits will better enhance environmental protection. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2007, No. 264, § 6: Mar. 9, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the distribution of federal funds to implement and effectuate the purpose and intent of this act and to carry out other essential gov-

ernmental services relating to an underground storage tank release detection, prevention, corrective action, and financial responsibility program as required by the Resource Conservation and Recovery Act of 1976 as it exists on January 1, 2007, is contingent upon implementing certain provisions of this act by February 8, 2007; that such federal funds are necessary to continue to provide essential governmental services; and that this act is immediately necessary because a delay in the effective date of this act may result in the loss of federal funds which could work

irreparable harm upon the proper administration and provision of essential governmental services. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Water and Environmental Law, 12 U. Ark. Little Rock L.J. 665.

8-7-801. Definitions.

As used in this subchapter:

(1)(A) "Aboveground storage tank" means any one (1) or a combination of containers, vessels, and enclosures located aboveground, including structures and appurtenances connected to them, whose capacity is greater than one thousand three hundred twenty gallons (1,320 gals.) and not more than forty thousand gallons (40,000 gals.) and that is used to contain or dispense motor fuels, distillate special fuels, or other refined petroleum products.

(B) "Aboveground storage tank" does not include mobile storage tanks used to transport petroleum from one location to another or those used in the production of petroleum or natural gas;

(2) "Adjacent property owner" means any person, other than an owner or operator, owning an interest in any property affected by a release;

(3) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(4) "Department" means the Arkansas Department of Environmental Quality;

(5) "Operator" means any person in control of or having responsibility for the daily operation of an underground storage tank;

(6)(A) "Owner" means:

(i) In the case of an underground storage tank in use on November 8, 1984, or brought into use after November 8, 1984, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances; and

(ii) In the case of any underground storage tank in use before November 8, 1984, but no longer in use on November 8, 1984, any

person who owned such underground storage tank immediately before the discontinuation of its use.

(B) "Owner" does not include any person who, without participation in the management of an underground storage tank, holds indicia of ownership primarily to protect a security interest in the underground storage tank;

(7) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, venture, or municipal, state, or federal government or agency, or any other legal entity, however organized;

(8) "Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure, sixty degrees Fahrenheit (60° F) and fourteen and seven-tenths pounds (14.7 lbs.) per square inch absolute;

(9) "Regulated substance" means:

(A) Any substance defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601(14), but not including any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6921 et seq.; and

(B) Petroleum;

(10)(A) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into groundwater, surface water, or subsurface soils.

(B) "Release" does not include releases that are permitted or authorized by the department or by federal law;

(11) "Release site property owner" means a person, other than an owner or operator, that owns an interest in a property on which a release has occurred;

(12) "Secondary containment" means a release prevention and release detection system for an underground storage tank or piping, or both, that provides an inner barrier and an outer barrier and an interstitial space between the two (2) barriers for monitoring to detect the presence of a leak or release of regulated substances from the underground storage tank or piping, or both;

(13) "Storage tank" means an aboveground storage tank or underground storage tank as defined in this subchapter; and

(14)(A) "Underground storage tank" means any one (1) or combination of tanks, including underground pipes connected thereto, which is or has been used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground.

(B) "Underground storage tank" does not include any:

(i) Farm or residential tank of one thousand one hundred gallons (1,100 gals.) or less capacity used for storing motor fuel for noncommercial purposes;

(ii) Tank used for storing heating oil for consumptive use on the premises where stored;

- (iii) Septic tank;
- (iv) Pipeline facility, including gathering lines, regulated under:
 - (a) The Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. § 60101 et seq.; and
 - (b) The Hazardous Liquid Pipeline Safety Act of 1979;
- (v) Surface impoundment, pit, pond, or lagoon;
- (vi) Storm water or wastewater collection system;
- (vii) Flow-through process tank;
- (viii) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
- (ix) Storage tank situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or
- (x) Pipes connected to any tank that is described in subdivisions (14)(B)(i)-(ix) of this section.

History. Acts 1989, No. 172, § 1; 1993, No. 810, § 1; 1995, No. 427, § 1; 1995, No. 436, § 1; 1999, No. 600, § 1; 1999, No. 1164, § 105; 2001, No. 1471, § 1; 2007, No. 264, § 1; 2009, No. 282, § 1; 2013, No. 1509, § 1.

Amendments. The 2013 amendment inserted (11).

U.S. Code. The Hazardous Liquid Pipeline Safety Act of 1979, referred to in this section, is codified primarily as 49 U.S.C. § 60101 et seq.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Environmental Law, 24 U. Ark. Little Rock L. Rev. 475.

8-7-802. Department and commission — Powers and duties.

(a) The Arkansas Pollution Control and Ecology Commission shall have the following powers and duties:

(1) To promulgate, after notice and public hearing, and to modify, repeal, and enforce, as necessary or appropriate to implement or effectuate the purposes and intent of this subchapter, rules and regulations relating to an underground storage tank release detection, prevention, corrective action, and financial responsibility program as required by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., and the Energy Policy Act of 2005, Pub. L. No. 109-58; and

(2)(A) To set reasonable fees for licensure of individuals and annual registration of underground storage tanks and aboveground storage tanks by rule or regulation.

(B)(i) The annual registration fee for underground storage tanks shall not exceed seventy-five dollars (\$75.00) per underground storage tank.

(ii) The fee shall be used by the Arkansas Department of Environmental Quality for administrative and program costs.

(C)(i) The annual registration fee for aboveground storage tanks shall not exceed seventy-five dollars (\$75.00) per aboveground storage tank.

(ii) The fee shall be used by the Arkansas Department of Environmental Quality for administrative and program costs, and ten dollars (\$10.00) of the fee collected by the Arkansas Department of Environmental Quality shall be remitted to the State Treasury, there to be deposited as special revenues to the credit of the Department of Arkansas State Police Fund to be used for the purposes of above-ground storage tank monitoring and regulation by the Department of Arkansas State Police.

(b) The Arkansas Department of Environmental Quality shall have the following powers and duties:

(1) To administer and enforce all laws, rules, and regulations relating to an underground storage tank release detection, prevention, and corrective action program, and financial responsibility, including the use of any and all appropriate legal remedies, to recover costs and collect penalties under this subchapter;

(2) To advise, consult, cooperate, and enter into agreements with appropriate federal, state, interstate, and local units of government and with affected groups and industries in the formulation of plans and in implementation of a program pursuant to this subchapter;

(3) To accept and administer loans and grants from the United States Government and from such other sources as may be available to the Arkansas Department of Environmental Quality for the planning, implementation, and enforcement of an underground storage tank program for release detection, prevention, corrective action, and financial responsibility;

(4) To examine and license individuals for the installation and testing of underground storage tanks;

(5) To enter upon any public or private property for the purpose of obtaining information, conducting surveys or investigations, or taking corrective action, and the Arkansas Department of Environmental Quality may copy or require submission of books, papers, records, memoranda, or data pertaining to the management of underground storage tanks;

(6) To enter into a cooperative agreement with the United States Environmental Protection Agency to carry out corrective actions and enforcement activities, including use of funds provided from the federal Leaking Underground Storage Tank Trust Fund, 26 U.S.C. § 9508; and

(7) To take such other action as necessary and appropriate to carry out the purposes of this subchapter and meet the requirements of federal law.

History. Acts 1989, No. 172, § 2; 1991, No. 594, § 1; 1993, No. 810, § 2; 2005, No. 671, § 1; 2007, No. 264, § 2.

U.S. Code. Sections 1521 through 1533 of the Energy Policy Act of 2005, Pub. L.

No. 109-58, referred to in this section, concern underground storage tanks and are codified at 42 U.S.C. § 6991 et seq.

Cross References. Department of Arkansas State Police Fund, § 19-6-404.

8-7-803. Regulations generally.

Any regulations promulgated under this subchapter shall as much as possible be identical to and no more stringent than the federal regulations adopted by the United States Environmental Protection Agency.

History. Acts 1989, No. 172, § 3.

8-7-804. Procedures generally.

The procedure of the Arkansas Department of Environmental Quality and the Arkansas Pollution Control and Ecology Commission for issuance of rules and regulations, conduct of hearings, notice, power of subpoena, review of action on permits, right of appeal, presumptions, finality of actions, and related matters shall be as provided in §§ 8-4-101 — 8-4-106 and 8-4-201 — 8-4-229, including, but not limited to, §§ 8-4-205, 8-4-210, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229 to the extent they are not in conflict with the provisions of this subchapter.

History. Acts 1989, No. 172, § 4; 1993, No. 810, § 3.

8-7-805. License requirement.

(a) It shall be unlawful for an individual to certify the installation or testing of an underground storage tank unless the individual has been duly licensed by the Arkansas Department of Environmental Quality.

(b)(1) Furthermore, no licensee shall install, remove, repair, close, upgrade, or test any underground storage tank unless the licensee or the contracting company by whom he or she is employed has purchased a surety bond, letter of credit, or cash bond:

(A) In the amount of at least twenty-five thousand dollars (\$25,000); and

(B) Which provides that the department is the obligee or payee of the instrument and otherwise complies with the regulations promulgated under this subchapter.

(2) The surety bond shall be issued by a company authorized to do business in the State of Arkansas and executed by an Arkansas agent.

(c) Licensees whose installation or testing activities are limited to their own or their employers' companies' underground storage tanks are exempt from the requirement to meet the financial responsibility requirements provided by this section.

(d) In the event the licensee or contracting company fails to properly install, remove, repair, close, upgrade, or test any underground storage tank pursuant to state law or regulation, the Director of the Arkansas Department of Environmental Quality shall commence proceedings to collect on the surety bond, letter of credit, or cash bond on which the department is the obligee or payee.

History. Acts 1989, No. 172, § 5; 1991, No. 601, § 1; 1999, No. 1164, § 106; 2003, No. 1186, § 1; 1993, No. 1019, § 1; 1999, No. 1203, § 1; 2005, No. 193, §§ 1, 2.

8-7-806. Penalties — Enforcement.

(a) It shall be unlawful for any person:

(1) To violate any provision of this subchapter or any rule or regulation adopted under this subchapter;

(2) To knowingly make a false statement, representation, or certification in any report or other document submitted under or required by this subchapter or the Petroleum Storage Tank Trust Fund Act, § 8-7-901 et seq., or any rule or regulation issued pursuant thereto; or

(3) To violate any order issued by the Arkansas Department of Environmental Quality under this subchapter or any provision of any such order.

(b) Any person who knowingly makes a false statement, representation, or certification as described in subdivision (a)(2) of this section shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each such violation.

(c) Any owner or operator who fails to give any notification regarding storage tanks required by this subchapter or any regulation issued pursuant to this subchapter shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each storage tank for which notification is not given.

(d)(1) Any person who violates any provision of this subchapter or of any rule, regulation, permit, certification, license, plan, or order issued pursuant thereto or who commits an unlawful act under this section may be assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation or unlawful act.

(2) Each day of a continuing violation or unlawful act may be deemed a separate violation or unlawful act for purposes of civil penalty assessment.

(3) If the violation or unlawful act concerns the operation of an underground storage tank, the civil penalty shall not exceed ten thousand dollars (\$10,000) for each underground storage tank for each day of violation or unlawful action.

(4) No civil penalty may be assessed until the person charged with the violation or unlawful act has been given the opportunity for a hearing in accordance with regulations adopted by the Arkansas Pollution Control and Ecology Commission.

(5) The administrative procedures set forth in § 8-7-804 may be used to recover all costs, expenses, and damages to the department and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including, but not limited to, natural resource damages.

(e) The department is authorized to institute a civil action in any court of competent jurisdiction to accomplish any or all of the following:

(1) Restrain any violation of or compel compliance with the provisions of this subchapter or of any rule, regulation, permit, certification, license, plan, or order issued pursuant to this subchapter or restrain the commission of any unlawful act under this section;

(2) Affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter;

(3) Recover all costs, expenses, and damages to the department and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including, but not limited to, natural resource damages;

(4) Assess civil penalties in an amount not to exceed ten thousand dollars (\$10,000) per day for violations of this subchapter or of any rule, regulation, permit, certification, license, plan, or order issued pursuant to this subchapter or for any unlawful act under this section;

(5) Recover civil penalties assessed pursuant to subsection (d) of this section; or

(6) Forfeit a surety bond purchased pursuant to this subchapter.

(f)(1) All civil penalties collected under this section shall be deposited into the Regulated Substance Storage Tank Program Fund.

(2) All moneys collected which represent the costs, expenses, or damages of another agency or subdivision of the state shall be distributed to the appropriate governmental entity.

History. Acts 1989, No. 172, § 6; 1993, No. 810, § 4; 2003, No. 486, § 1.

8-7-807. Responsibility and liability of owner.

(a)(1) Upon a determination that a release of a regulated substance from a storage tank has occurred, the owner or operator shall notify the Arkansas Department of Environmental Quality. The owner or operator shall immediately undertake to collect and remove the release and to restore the area affected in accordance with the requirements of this subchapter.

(2) However, the obligation of an owner or operator of an aboveground storage tank to notify the department or undertake the other activities required in this subsection shall not exceed and will be limited to the existing requirements of any other applicable federal or state statutes or regulations.

(b) If the owner or operator fails to proceed as required in subsection (a) of this section, the owner and operator shall be liable to the department for any costs incurred by the department for undertaking corrective action or enforcement action with respect to the release of a regulated substance from a storage tank.

(c)(1)(A) A release site property owner or adjacent property owner shall not unduly impede or interfere with the efforts of the department or the owner or operator to undertake investigation, site assessment, or corrective action in accordance with the requirements of this subchapter.

(B) The department or the owner, as defined in § 8-7-801, or operator shall undertake investigation, site assessment, or corrective action, as approved by the department after notice to the affected

parties, that minimizes to the most reasonable extent practicable any interference with the release site property owner's or adjacent property owner's use and enjoyment of the property, taking into consideration the relevant private and commercial interests and the release site property owner's or adjacent property owner's need for access.

(2)(A) A release site property owner or adjacent property owner that violates subdivision (c)(1) of this section is liable for any investigation, site assessment, or corrective action costs resulting from the violation.

(B) If the release site property owner or adjacent property owner denies access to property when the access is reasonably necessary for investigation, site assessment, or corrective action undertaken by the department or by the owner or operator under a department directive, order, or approved corrective action plan, the department may order the release site property owner or adjacent property owner to undertake the portion of investigation, site assessment, or corrective action that was prohibited by the denial of access.

(3) This section does not impair any right of the release site property owner or adjacent property owner to seek equitable or legal remedies, including without limitation claims for trespass, compensation as the result of eminent domain, damages for temporary or permanent takings of rights in land, contribution, and any other right or remedy allowed by state or federal law or regulation.

(d)(1) Any party found liable for any costs or expenditures recoverable under this subchapter which establishes by a preponderance of the evidence that only a portion of such costs or expenditures are attributable to his or her actions shall be required to pay only for that portion.

(2) If the trier of fact finds the evidence insufficient to establish each party's portion of costs or expenditures, the court shall apportion the costs or expenditures, to the extent practicable, according to equitable principles, among the responsible parties.

(3) In any action under this subchapter, no responsible party shall be liable for more than that party's apportioned share of the amount of costs or expenditures recoverable for the site.

(4) Any expenditures required under this subchapter made by a responsible party, before or after suit or before or after a complaint has been filed with or heard by the Arkansas State Claims Commission, shall be credited toward any apportioned share.

(e) Any costs recovered by the department under this section shall be used to reimburse the Petroleum Storage Tank Trust Fund in the amount utilized by the department and the balance, if any, deposited into the Regulated Substance Storage Tank Program Fund.

History. Acts 1989, No. 172, § 7; 1993, No. 810, § 5; 1999, No. 600, § 2; 2013, No. 1509, § 2.

Amendments. The 2013 amendment rewrote (c).

Cross References. Petroleum Storage Tank Trust Fund, §§ 8-7-905 and 19-5-959.

RESEARCH REFERENCES

Ark. L. Rev. Recent Developments, Remedies — Restoration Costs, 57 Ark. L. Rev. 697.

CASE NOTES

Exhaustion of Administrative Remedies.

Landowners did not bypass any administrative remedy when they sought monetary damages for additional cleanup costs over and above the corrective-action plan approved and implemented by the

Arkansas Department of Environmental Quality; when a plaintiff prays for relief in litigation that is clearly not available at the administrative level, exhaustion of other available administrative remedies is not required. *Felton Oil Co., L.L.C. v. Gee*, 357 Ark. 421, 182 S.W.3d 72 (2004).

8-7-808. Regulated Substance Storage Tank Program Fund.

There is hereby established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the “Regulated Substance Storage Tank Program Fund”. Such Regulated Substance Storage Tank Program Fund shall consist of federal funds, any necessary state matching funds as may be provided by the General Assembly, licensure fees, annual registration fees, and any moneys recovered by the Arkansas Department of Environmental Quality which are attributable to collections of civil penalties under § 8-7-806 or to costs under § 8-7-807 not owed the Petroleum Storage Tank Trust Fund. All said moneys shall be deposited as special revenues to be used in the administration of this subchapter.

History. Acts 1989, No. 172, § 8.

959.

Cross References. Petroleum Storage Tank Trust Fund, §§ 8-7-905 and 19-5-

Regulated Substance Storage Tank Program Fund, § 19-6-463.

8-7-809. Corrective actions — Orders of director.

(a) Nothing in this subchapter or the regulations promulgated under this subchapter shall prevent any person from undertaking corrective action which would provide reasonable protection of public health and safety and the environment.

(b)(1) Notwithstanding any other provisions of this subchapter, the Director of the Arkansas Department of Environmental Quality, upon finding that the release may present an imminent and substantial hazard to the health of persons or to the environment and that an emergency exists requiring immediate action to protect the public health and welfare or the environment may, without notice or hearing, issue an order reciting the existence of such an imminent hazard and emergency and requiring that such action be taken as he or she determines to be necessary to protect the health of such persons or the environment and to meet the emergency.

(2) The order of the director may include, but is not limited to, directing the owner or operator of the site which constitutes the hazard

to take such steps as are necessary to prevent the act or eliminate the practice which constitutes the hazard, and, with respect to a facility or site, the director may order cessation of operation.

(3) Any person to whom the order is directed shall comply with it immediately, but, upon written application to the director within ten (10) days of the issuance of the order, that person shall be afforded a hearing before the Arkansas Pollution Control and Ecology Commission within ten (10) days after receipt of the written request.

(4) On the basis of the hearing, the commission shall continue the order in effect or shall revoke or modify it.

History. Acts 1989, No. 172, § 9; 1993, No. 810, § 6.

8-7-810. Insurance pools.

(a) Owners or operators of storage tanks who are unable to demonstrate financial responsibility in the minimum amounts specified by the Arkansas Department of Environmental Quality may establish an insurance pool in order to demonstrate such financial responsibility.

(b)(1) The formation and operation of an insurance pool under this section shall be subject to approval by the Insurance Commissioner, who shall, after notice and hearing, establish through rules and regulations a method for approval and monitoring of such insurance pools.

(2) Such regulations may include:

(A) Provisions for periodic examinations of financial condition, including inspection of books, papers, accounts, and affairs of the plan;

(B) Conditions for participation in the plan;

(C) Minimum amounts of cash reserves and insurance coverage to be acquired;

(D) Requirements for sound management of the plan;

(E) Grounds for suspension or withdrawal of approval of the plan; and

(F) Grounds for termination of the plan.

History. Acts 1989, No. 172, § 10.

8-7-811. Trade secrets.

(a) Any records, reports, or information obtained by the Arkansas Department of Environmental Quality or the department's employees in the administration of this subchapter, except release data, shall be kept confidential upon a showing satisfactory to the Director of the Arkansas Department of Environmental Quality that the records, reports, or information would constitute a trade secret under § 4-75-601 et seq.

(b) As necessary to carry out the provisions of this subchapter, information afforded confidential treatment may be transmitted under

a continuing claim of confidentiality to other officers or employees of the state or of the United States if the owner or operator of the facility to which the information pertains is informed of the transmittal and if the information has been acquired by the department under the provisions of this subchapter.

(c) The provisions of this section shall not be construed to limit the department's authority to release confidential information during emergency situations.

(d) Any violation of this section shall be unlawful and shall constitute a misdemeanor.

History. Acts 1989, No. 172, § 11; 1993, No. 810, § 7.

Cross References. Misdemeanors, § 5-1-107.

8-7-812. Subchapter controlling over other laws.

(a) This subchapter shall supersede and preempt all local government laws, ordinances, and regulations pertaining to underground storage tanks, except for any applicable local building permit or fire code requirements pertaining to installation of underground storage tanks.

(b) The provisions of this subchapter and the rules and regulations promulgated pursuant to this subchapter shall govern if they conflict with the provisions of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., the Arkansas Solid Waste Management Act, § 8-6-201 et seq., or the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., or any action taken by the Arkansas Department of Environmental Quality under the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., the Arkansas Solid Waste Management Act, § 8-6-201 et seq., or the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.

History. Acts 1989, No. 172, § 12.

CASE NOTES

Applicability.

Pursuant to this section, where the Arkansas Solid Waste Management Act, § 8-6-201 et seq., provides a remedy, that remedy does not conflict with the Regulated Substance Storage Tank Law, § 8-7-801 et seq., because such a remedy would be in addition to, not in conflict with, the

regulations found in the storage tank law; the storage tank law does not provide the exclusive remedy for storage tanks leaks and does not supersede the Solid Waste Management Act absent a conflict. *Patton v. TPI Petroleum, Inc.*, 356 F. Supp. 2d 921 (E.D. Ark. 2005).

8-7-813. Registration.

(a) Except as provided under subsections (e) and (f) of this section, all owners and operators of storage tanks shall register their storage tanks as required by federal regulations and in accordance with the regulations adopted under this subchapter.

(b)(1) Except as provided under subsections (e) and (f) of this section, all owners and operators shall maintain proof of current and proper registration at the registered facility and post the proof in a conspicuous place on-site.

(2) Proof of registration shall be in the form determined by regulations adopted under this subchapter.

(c)(1) If a storage tank is required to be registered under this subchapter, the owner or operator shall not receive any regulated substance into any storage tank for which current and proper proof of registration has not been provided to the person selling the regulated substance.

(2) A person selling any regulated substance shall not deliver or cause to be delivered a regulated substance into any storage tank for which he or she has not obtained current and proper proof of registration from the owner or operator.

(d) Any person violating this section is subject to § 8-7-806.

(e) This subchapter does not apply to aboveground storage tanks located on farms, the contents of which are used for agricultural purposes and not held for resale.

(f) An aboveground storage tank that contains petroleum may be registered under this subchapter at the option of the owner or operator for the purpose of allowing potential eligibility for reimbursement under the Petroleum Storage Tank Trust Fund Act, § 8-7-901 et seq.

History. Acts 1993, No. 810, § 8; 2017, No. 584, § 1.

Amendments. The 2017 amendment added “Except as provided under subsections (e) and (f) of this section” in (a) and (b)(1); substituted “shall” for “must” in (a) and (b)(1); substituted “under this subchapter” for “hereunder” in (a) and (b)(2); in (c)(1), substituted “If a storage tank is required to be registered under this sub-

chapter, the” for “No” and inserted “not” following “shall”; in (c)(2), substituted “A person” for “Neither shall any person”, and inserted “shall not” preceding “deliver”; substituted “this section is subject to” for “any provision of this section shall be subject to the provisions of” in (d); substituted “This subchapter does not” for “The provisions of this subchapter shall not” in (e); and added (f).

8-7-814. Delivery prohibition.

(a) It shall be unlawful to deliver to, deposit into, or accept a regulated substance into an underground storage tank at a facility that has been identified by the Arkansas Department of Environmental Quality to be ineligible for fuel delivery or deposit.

(b) The Arkansas Pollution Control and Ecology Commission shall adopt regulations to implement the criteria and process required by the delivery prohibition requirements of the Energy Policy Act of 2005, Pub. L. No. 109-58, and the regulations shall consist of, at a minimum, the federal guidelines for determining the significant operational compliance of underground storage tank systems.

(c) In order to prevent the delivery of a regulated substance into an underground storage tank system that has been identified by the department to be ineligible for fuel delivery or deposit, the department shall affix a tamper-proof tag, seal, or other device blocking the fill pipes

of the ineligible underground storage tank. This affixed notice shall serve as written notification to the owner, the operator, and the product delivery industry.

(d) No owner or operator shall receive any regulated substance into any underground storage tank to which notification of delivery prohibition has been affixed.

(e) No person selling any regulated substance shall deliver or cause to be delivered a regulated substance into any underground storage tank to which notification of delivery prohibition has been affixed.

(f) It shall be unlawful for any person, other than an authorized representative of the department, to remove, tamper with, destroy, or damage a device affixed to any underground storage tank by department personnel.

(g) Any person violating any provision of this section shall be subject to an assessment of an administrative civil penalty as set forth in this subchapter.

History. Acts 1999, No. 505, § 1; 2007, No. 264, § 3.

U.S. Code. Relevant provisions of the

Energy Policy Act of 2005, Pub. L. No. 109-58, referred to in this section, are codified at 42 U.S.C. § 6991 et seq.

8-7-815. [Repealed.]

Publisher's Notes. This section, concerning storage tank self-inspection audit, was repealed by Acts 2009, No. 282, § 2.

The section was derived from Acts 2001, No. 1471, § 2.

8-7-816. Secondary containment.

(a)(1) Each new underground storage tank or piping connected to any new underground storage tank shall be secondarily contained and monitored for leaks.

(2) In the case of a new underground storage tank system consisting of one (1) or more underground storage tanks and connected by piping, the requirement to provide secondary containment shall apply to all underground storage tanks and connected pipes comprising such underground storage tank system.

(b)(1) Any existing underground storage tank or existing piping connected to an existing underground storage tank that is replaced shall be secondarily contained and monitored for leaks.

(2) In the case of a replacement of an existing underground storage tank or existing piping connected to the underground storage tank, the requirement to provide secondary containment shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes comprising such underground storage tank system.

(c)(1) Each installation of a new motor fuel dispenser system or replacement of an existing motor fuel dispenser system shall include under-dispenser spill containment.

(2) A motor fuel dispenser system is considered to have been replaced when an existing motor fuel dispenser and the equipment necessary to connect the motor fuel dispenser to the underground storage tank system are removed and another motor fuel dispenser and the equipment necessary to connect the motor fuel dispenser to the underground storage tank system are put in its place.

(d) All secondary containment installed shall comply with federal regulations for underground storage tanks and the regulations adopted under this subchapter.

(e) Any person violating any provision of this section shall be subject to the provisions of § 8-7-806.

History. Acts 2007, No. 264, § 4; 2017, No. 534, §§ 1-4.

Amendments. The 2017 amendment, in (a)(1), deleted “installed after July 1, 2007” following the second occurrence of “tank” and deleted “if the new underground storage tank or piping is within one thousand feet (1,000') of any existing community water system or any existing potable drinking water well” at the end; in (b)(1), deleted “after July 1, 2007” following “replaced” and deleted “if the replaced

underground storage tank or piping is within one thousand feet (1,000') of any existing community water system or any existing potable drinking water well” at the end; repealed (b)(3); in (c)(1), deleted “after July 1, 2007” following the second occurrence of “system” and deleted “if the new or replaced dispenser is within one thousand feet (1,000') of any existing community water system or any existing potable drinking water well” at the end; and made a stylistic change.

8-7-817. Operator training.

(a) All operators of underground storage tank systems shall complete training in the operation and maintenance of underground storage tank systems in accordance with regulations promulgated under this section.

(b) For purposes of compliance with this section, the following persons shall be considered “operators” required to receive operator training:

(1) Persons having primary responsibility for on-site operation and maintenance of underground storage tank systems;

(2) Persons having daily on-site responsibility for the operation and maintenance of underground storage tank systems; and

(3) Daily on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system.

History. Acts 2007, No. 264, § 5.

SUBCHAPTER 9 — PETROLEUM STORAGE TANK TRUST FUND ACT

SECTION.

- 8-7-901. Title.
- 8-7-902. Definitions.
- 8-7-903. Rules and regulations — Powers of department.
- 8-7-904. Advisory committee.

SECTION.

- 8-7-905. Petroleum Storage Tank Trust Fund.
- 8-7-906. Petroleum environmental assurance fee.
- 8-7-907. Payments for corrective action.

SECTION.

8-7-908. Third-party claims.

8-7-909. Confidential treatment of information.

A.C.R.C. Notes. Acts 1989, No. 173, § 10, provided: "If any provision of this act is found to conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act."

Publisher's Notes. Acts 1991, No. 219, § 9, provided: "Provided, nothing in this act shall be construed to amend, abrogate, modify, or repeal any of the provisions of the 'Petroleum Storage Tank Trust Fund Act,' Arkansas Code § 8-7-901 et seq., and the fees levied by that act on each gallon of motor fuel or distillate special fuels shall continue to be collected as provided by those Code sections in addition to all taxes and fees imposed by other sections of the Code on such fuel or fuels as well as those additional taxes and fees imposed by this act."

Acts 1991, No. 219 is codified as §§ 26-56-201, 26-56-222, 27-14-601, and 27-35-210. Acts 1991, No. 219 also repealed §§ 27-35-204, 27-35-205, and 27-35-212.

Identical Acts 1991, Nos. 364 and 382, § 6, provided: "Provided, nothing in this act shall be construed to amend, abrogate, modify, or repeal any of the provisions of the 'Petroleum Storage Tank Trust Fund Act,' Arkansas Code § 8-7-901 et seq., and all fees on each gallon of motor fuel or distillate special fuels shall continue to be collected as provided by those code sections in addition to all taxes and fees imposed by other sections of the code on such fuel or fuels as well as those additional taxes and fees imposed by this act."

Effective Dates. Acts 1989, No. 173, § 13: Feb. 22, 1989, except § 4: effective July 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interest of the people of the State of Arkansas that a fund be established for corrective action and compensation to third parties to maintain the environment and protect the public health, welfare and

safety; that for immediate funds to begin accumulating in this fund, under section 4 of this act, it is necessary for section 4 to become effective July 1, 1989 and all other provisions to become effective immediately upon passage. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval with section 4 of this act to become effective July 1, 1989."

Acts 1989 (3rd Ex. Sess.), No. 65, § 16: Nov. 16, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that underground storage tank insurance is not readily available to cover the deductibles or upper-level third party damage claims; therefore, the relevant provisions must be changed, and this Act should be given effect immediately in order to relieve the burden as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1054, § 7: Apr. 10, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need to provide an additional method for financing the remediation costs and costs of compensating tank owners or operators for third-party claims from the Petroleum Storage Tank Trust Fund. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends

various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1018, § 8: Apr. 2, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Arkansas Code 25-16-903 authorized members of the Advisory Committee on Petroleum Storage Tanks and members of the State Marketing Board of Recyclables to receive a stipend for attending board meetings; that Arkansas Code 8-7-904 and 8-9-201 were enacted prior to Arkansas Code 25-16-903 and do not mention stipends; that the earlier code sections should be amended to parallel the authority granted in § 25-16-903; that this act makes those technical corrections; and that this act should go into effect as soon as possible in order to avoid confusion. It is further found and determined by the General Assembly that the current law concerning expense reimbursement for the State Board of Collection Agencies does not conform to Arkansas Code 25-16-901 et seq.; the State Board of Collection Agencies should be allowed to receive a stipend; and that this act is immediately necessary for the effective operation of the State Board of Collection Agencies. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1027, § 8: Apr. 2, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the expansion of the fund to include undiscovered petroleum storage tanks for which fees have not been paid is necessary to ensure that owners or operators search for such tanks and perform necessary investigations or corrective action. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1354, § 51: Apr. 14, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act affects the method of selection of alternate members of the Legislative Council and Legislative Joint Auditing Committee and that this act is immediately necessary for proper continuity and efficiency in State government. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1508, § 19: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that this act makes various technical corrections in the Arkansas Code; that this act further clarifies the law to provide that the Arkansas Code Revision Commission may correct errors resulting from enactments of prior sessions; and that this act should go into effect immediately in order to be applicable during the codification process of the enactments of this regular session.

Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1471, § 6: Apr. 10, 2001. Emergency clause provided: "It is hereby found and determined by the 83rd General Assembly that under present law a requirement for Petroleum Storage Tank Trust Fund eligibility is substantial compliance with applicable federal and state requirements. This eligibility requirement poses two significant problems. First, a storage tank owner or operator found ineligible for the Petroleum Storage Tank Trust Fund reimbursement is in reality penalized tens of thousands of dollars that are typically expended on investigation and/or remediation of petroleum releases. Second, the difficulty specifying the type of conduct that constitutes substantial compliance generates uncertainty as to whether the Petroleum Storage Tank Trust Fund will be available to owners or operators of such equipment. Consequently, it has been determined that instead of judging trust fund eligibility on the basis of substantial compliance, requiring owners and operators of storage tanks to annually complete and submit to the department self-inspection audits will better enhance environmental protection. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become ef-

fective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 1114, § 7: Apr. 7, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that under present law a requirement for Petroleum Storage Tank Fund eligibility for reimbursement for third party claims for bodily injury and property damage is the payment of seven thousand five hundred dollars (\$7,500) to injured third parties by the owner or operator; that if the owner or operator is discharged in bankruptcy or declared insolvent, injured third parties may have no protection under the law; that existing law should be changed immediately so that injured third parties will be guaranteed access to the fund that is specifically designed to compensate them for their injuries; and that, in addition, owners or operators may not enjoy the protection originally intended by the General Assembly when it initially enacted this statute unless the definition of compensatory damages is clarified. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Water and Environmental Law, 12 U. Ark. Little Rock L.J. 665.

Wright, In Storage Tank Funds We Trust: An Analysis of Their Role in Pro-

tecting the Environment and Small Business, 13 U. Ark. Little Rock L.J. 417.

8-7-901. Title.

This subchapter may be known and may be cited as the “Petroleum Storage Tank Trust Fund Act”.

History. Acts 1989, No. 173, § 1.

8-7-902. Definitions.

As used in this subchapter:

(1)(A) “Aboveground storage tank” means any one (1) or a combination of containers, vessels, and enclosures located aboveground, including structures and appurtenances connected to them, the capacity of which is greater than one thousand three hundred twenty gallons (1,320 gals.) and not more than forty thousand gallons (40,000 gals.) and that is used to contain or dispense motor fuels, distillate special fuels, or other refined petroleum products.

(B) “Aboveground storage tank” does not include mobile storage tanks used to transport petroleum from one (1) location to another or those used in the production of petroleum or natural gas;

(2) “Accidental release” means any sudden or nonsudden confirmed release of petroleum from a storage tank that results in a need for corrective action or a claim for compensatory damages, or both, neither expected nor intended by the storage tank owner or operator;

(3) “Advisory committee” or “committee” means the Advisory Committee on Petroleum Storage Tanks as established in this subchapter;

(4) “Commission” means the Arkansas Pollution Control and Ecology Commission;

(5)(A) “Compensatory damages” means all damages for which an owner or operator may be liable, including, without limitation, bodily injury or property damage.

(B) “Compensatory damages” does not include:

(i) Punitive damages; or

(ii) The costs of litigation, which shall not be limited to attorney’s or expert witness fees.

(C) This definition shall apply to any pending third-party claim which has not been reduced to judgment as of April 7, 2003;

(6) “Corrective action” means those actions which may be necessary to protect human health and the environment as a result of an accidental release, sudden or nonsudden;

(7) “Department” means the Arkansas Department of Environmental Quality;

(8) “Director” means the Director of the Arkansas Department of Environmental Quality;

(9) “Distributor” means and includes any person, including the State of Arkansas and any political subdivision thereof, but not including the United States or any of its instrumentalities, except to the extent permitted by the United States Constitution or laws thereof, who is customarily in the wholesale business of offering motor fuels for resale

or delivery to dealers, consumers, or others in storage tanks of two hundred gallons (200 gals.) or more which are not connected to motor vehicles and is:

(A) Making the first sale in the State of Arkansas of any motor fuel imported into the state from any other state, territory, or foreign country after it has been received within this state within the meaning of the Motor Fuel Tax Law, § 26-55-201 et seq.;

(B) Consuming or using in the State of Arkansas any motor fuel so imported and who has purchased it before it has been received by any other person in this state, within the meaning of the Motor Fuel Tax Law, § 26-55-201 et seq.; or

(C) Producing, refining, preparing, distilling, manufacturing, blending, or compounding motor fuel in this state;

(10) "Fund" means the Petroleum Storage Tank Trust Fund created by this subchapter;

(11) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from a storage tank;

(12) "Owner or operator", when the owner and operator are separate parties, means the person who is required to obtain financial assurances under the state underground storage tank program or federal underground storage tank program;

(13) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, or venture, or municipal, state, or federal government or agency, or any other legal entity, however organized;

(14) "Petroleum" means petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure of sixty degrees Fahrenheit (60° F) and fourteen and seven-tenths pounds per square inch (14.7 psi) absolute;

(15)(A) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a storage tank into groundwater, surface water, or subsurface soils.

(B) "Release" does not include a release that is permitted or authorized by the department or by federal law;

(16) "Storage tank" means an aboveground storage tank or underground storage tank as defined in this subchapter;

(17)(A) "Supplier" means any person who is customarily in the wholesale business of offering distillate special fuels or liquefied gas special fuels for resale or use to any person in this state and who makes bulk sales of fuel.

(B) "Supplier" includes pipeline importers, first receivers, and second receivers;

(18) "Terminal" means a bulk storage facility for storing petroleum products supplied by pipeline or marine vessels;

(19)(A) "Underground storage tank" means any one (1) or a combination of tanks, including underground pipes connected thereto, that is or has been used to contain petroleum, and the volume of which,

including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground.

(B) "Underground storage tank" does not include any:

(i) Farm or residential tank of one thousand one hundred gallons (1,100 gals.) or less capacity used for storing motor fuel for noncommercial purposes;

(ii) Tank used for storing heating oil for consumptive use on the premises where stored;

(iii) Septic tank;

(iv) Intrastate and interstate pipeline facilities regulated by the Arkansas Public Service Commission or other applicable state or federal agency and all other pipeline facilities, including gathering lines regulated under:

(a) The Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. § 60101 et seq.; or

(b) The Hazardous Liquid Pipeline Safety Act of 1979;

(v) Surface impoundment, pit, pond, or lagoon;

(vi) Storm water or wastewater collection system;

(vii) Flow-through process tank;

(viii) Liquid trap or associated gather lines directly related to oil or gas production and gathering operations;

(ix) Storage tank situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

(x) Any pipes connected to any tank which is described in this subdivision (19)(B); and

(20)(A) "Unknown petroleum storage tank" means a petroleum storage tank as defined by this subchapter whose existence on a property or facility at the time of the discovery of a release was not known or should not have reasonably been known by the owner or operator.

(B) An owner or operator is deemed to have known of the existence of an unknown petroleum storage tank if there was surficial evidence of such a petroleum storage tank in the form of visible vent pipes, fill caps, or lines protruding from the petroleum storage tank.

History. Acts 1989, No. 173, § 2; 1989 (3rd Ex. Sess.), No. 65, §§ 1, 2; 1991, No. 616, § 1; 1993, No. 951, § 1; 1997, No. 641, § 1; 1997, No. 1027, §§ 3, 4; 1999, No. 1164, § 107; 2001, No. 1471, § 3; 2003, No. 1114, § 1; 2009, No. 282, § 3.

U.S. Code. The Hazardous Liquid Pipeline Safety Act of 1979, referred to in this section, is codified primarily as 49 U.S.C. § 60101 et seq.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Wright, In Storage Tank Funds We Trust: An Analysis of Their Role in Protecting the Environment and Small Business, 13 U. Ark. Little Rock L.J. 417.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Environmental Law, 24 U. Ark. Little Rock L. Rev. 475.

8-7-903. Rules and regulations — Powers of department.

(a) The Director of the Department of Finance and Administration is authorized to adopt appropriate rules and regulations not inconsistent with this subchapter as he or she may deem necessary to carry out the intent and purposes of and to assure compliance with this subchapter.

(b) The Arkansas Pollution Control and Ecology Commission is authorized to adopt appropriate rules and regulations not inconsistent with this subchapter to carry out the intent and purposes of and to assure compliance with this subchapter.

(c) The Arkansas Department of Environmental Quality shall have the authority to enter upon the property of any owner or operator of an aboveground storage tank to obtain information, conduct surveys, or review records for the purpose of determining substantial compliance, as defined by this subchapter and regulations promulgated thereunder, with all state and federal laws and regulations relating to aboveground storage tanks prior to the director's approval of a claim for reimbursement or disbursement.

History. Acts 1989, No. 173, § 5; 1989 (3rd Ex. Sess.), No. 65, § 7; 1993, No. 951, § 2; 1997, No. 641, § 2.

8-7-904. Advisory committee.

(a)(1) There is established the Advisory Committee on Petroleum Storage Tanks to be composed of the following members:

(A) A representative from the property and casualty segment of the insurance industry;

(B) A representative from a company that is a refiner and also has service stations or other motor fuel retail outlets in the state;

(C) A representative from a company that is a jobber or wholesaler of petroleum products in the state;

(D) An independent retail service station dealer;

(E) The State Fire Marshal or his or her designee;

(F) A representative from a company that installs or repairs petroleum storage tanks; and

(G) A representative from a company that has one (1) or more employees with knowledge and expertise regarding environmental protection and management matters.

(2) The Governor shall appoint the members of the committee subject to confirmation by the Senate as follows:

(A) The Governor shall consult the Arkansas Petroleum Council before making the appointment under subdivision (a)(1)(B) of this section;

(B) The Governor shall consult the Arkansas Oil Marketers Association before making the appointment under subdivision (a)(1)(C) of this section;

(C) The Governor shall consult the Service Station Dealers of Arkansas before making the appointment under subdivision (a)(1)(D) of this section; and

(D) The Governor shall consult the Arkansas Environmental Federation, Inc., before making the appointment under subdivision (a)(1)(G) of this section.

(3) Each member of the committee shall serve a four-year term and until a successor has been appointed.

(4) Any vacancies shall be filled by the Governor to serve the remainder of the term.

(b) Committee members shall serve without compensation but may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(c) The committee shall select a member to serve as chair each year.

(d) The committee shall meet as necessary to carry out its duties under this subchapter and at the call of the chair.

(e) The Arkansas Department of Environmental Quality shall provide adequate staff to support the activities of the committee.

(f) The committee shall adopt all rules and regulations necessary to conduct its business.

(g) The committee shall advise and make recommendations to the Director of the Arkansas Department of Environmental Quality regarding claims for payment under this subchapter.

(h) The committee shall advise the department and the Arkansas Pollution Control and Ecology Commission regarding promulgation of rules and regulations concerning storage tanks.

(i) No member of the committee shall participate in any decision on any claim in which the firm or organization by which that member is employed or in which that member has a direct or indirect financial interest is involved.

History. Acts 1989, No. 173, § 6; 1993, No. 951, § 3; 1997, No. 250, § 49; 1997, No. 1018, § 1; 1997, No. 1354, § 9; 1999, No. 1508, §§ 2, 7; 2015, No. 1100, § 8.

added “subject to confirmation by the Senate as follows” in the introductory language of (a)(2); and rewrote (a)(2)(A) through (D).

Amendments. The 2015 amendment

8-7-905. Petroleum Storage Tank Trust Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the “Petroleum Storage Tank Trust Fund”, hereinafter referred to as the “fund”.

(b) The fund will be administered by the Director of the Arkansas Department of Environmental Quality, who shall make disbursements from the fund as authorized by this subchapter.

(c) The fund shall consist of gifts, grants, donations, and such other funds as may be made available by the General Assembly, including all interest earned upon money deposited into the fund, fees assessed under this subchapter, any moneys recovered by the Arkansas Depart-

ment of Environmental Quality, the proceeds of bonds issued by the Arkansas Development Finance Authority for the benefit of the fund, and any other moneys legally designated for the fund.

(d) Moneys in the fund may be expended by the director solely for the following purposes, as limited by the provisions of subsection (e) of this section:

(1) The state share mandated by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.;

(2) To pay costs incurred by the Arkansas Pollution Control and Ecology Commission, the director, the Attorney General, or the Advisory Committee on Petroleum Storage Tanks in the performance of their duties under this subchapter;

(3) To pay reimbursement to owners and operators for taking corrective action or to pay third parties for compensatory damages caused by accidental releases from qualified storage tanks;

(4) To pay reasonable and necessary costs and expenses of the department for taking corrective action caused by accidental releases from a storage tank of unknown ownership or when corrective action is not commenced by the owner or operator in a timely manner;

(5)(A) To reimburse owners and operators in the vicinity of the release for performing short-term testing or monitoring which is in addition to that required by the department's rules and regulations if the department has a reasonable basis for believing that the petroleum underground storage tank or tanks may be the source of the release.

(B) The owners and operators of petroleum underground storage tanks, including out-of-service and nonoperational petroleum underground storage tanks, not found to be the source of the release and who cooperate with the department may apply to the fund for reimbursement for such testing and monitoring costs, not including lost managerial time or loss of revenues because of temporary business closure; and

(6) To reimburse a consultant under § 8-7-907(k) for the purchase of equipment needed to undertake corrective action.

(e) Notwithstanding any other provisions of this subchapter, the director, upon finding that a release may present an imminent and substantial hazard to the health of persons or to the environment and that an emergency exists requiring immediate action to protect the public health and welfare or the environment, may, without receiving prior advice from the committee, issue an order reciting the existence of such an imminent hazard and emergency and ordering a disbursement or reimbursement of up to fifty thousand dollars (\$50,000) from the fund so that such action may be taken as he or she determines to be necessary to protect the health of such persons or the environment and to meet the emergency.

(f)(1) No expenditure from the fund shall be made for expenses for retrofitting or replacement of petroleum storage tanks.

(2) No expenditure from the fund pursuant to subdivisions (d)(3) and (5) of this section shall be made for attorney's fees.

(g) The liability or obligation of the fund is not the liability or obligation of the State of Arkansas. However, this subsection shall not be construed as relieving the fund of any liability or obligation prescribed in this subchapter upon the entry of a valid court order or valid final order of the Arkansas State Claims Commission establishing a judgment against any state agency, board, department, or commission or when a settlement agreement has been reached arising from third-party claims against any state agency, board, department, or commission when the state agency, board, department, or commission is determined to be the owner or operator.

(h) Nothing in this subchapter shall be construed to abrogate or waive the provisions of Arkansas Constitution, Article 5, § 20.

(i)(1) An owner or operator who considers himself or herself injured in his or her business, person, or property by a final decision of the director or the director’s delegatee under this subchapter may appeal the decision to the Arkansas Pollution Control and Ecology Commission within thirty (30) days after the date of the final decision of the director or the director’s delegatee.

(2) The procedures of the department and the Arkansas Pollution Control and Ecology Commission for issuance of rules and regulations, conduct of hearings, notice, power of subpoena, right of appeal, presumptions, finality of actions, and related matters shall be as provided in §§ 8-4-202, 8-4-210 — 8-4-214, and 8-4-218 — 8-4-229, and in rules and regulations applicable to administrative procedures of the department and the Arkansas Pollution Control and Ecology Commission to the extent they are not in conflict with the provisions of this subchapter.

History. Acts 1989, No. 173, § 3; 1989 (3rd Ex. Sess.), No. 65, §§ 3, 4; 1991, No. 615, § 1; 1993, No. 951, § 4; 1995, No. 1054, § 2; 1997, No. 641, § 3; 2001, No. 206, § 1; 2003, No. 1114, § 2; 2013, No. 406, § 1.

Amendments. The 2013 amendment added (d)(6).

Cross References. Petroleum Storage Tank Trust Fund, § 19-5-959.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Environmental Law, 24 U. Ark. Little Rock L. Rev. 475.

8-7-906. Petroleum environmental assurance fee.

(a) There is established a petroleum environmental assurance fee to be paid, except as provided in subsection (c) of this section, on each gallon of motor fuel or distillate special fuel purchased in or imported into this state.

(b) The fee shall be paid by the first distributor or supplier receiving fuel from a terminal in this state, or, if the fuel will never be stored in a terminal in this state, then by the distributor or supplier who first imports fuel into this state by tank truck.

(c) Exchanges of fuels on a gallon-for-gallon basis within a terminal or fuels exported from this state are exempt from the fee.

(d) Proof of payment shall be provided to the owner or operator.

(e) The fee shall be remitted to the Director of the Department of Finance and Administration at the time, in the manner, and on forms prescribed by the director and may be collected and remitted at the same time and in the same manner as the motor fuels tax and special motor fuels tax under § 26-55-101 et seq. and the Special Motor Fuels Tax Law, § 26-56-101 et seq.

(f)(1) For so long as no bonds for the benefit of the Petroleum Storage Tank Trust Fund are issued and outstanding, the fees collected under this subchapter shall be deposited into the Petroleum Storage Tank Trust Fund.

(2) The applicable fund balances shall be required to be maintained in perpetuity.

(g)(1) The maximum rate for the fee shall be at a rate of three-tenths of one cent (0.3¢) for each gallon of fuel.

(2)(A) For so long as no bonds for the benefit of the Petroleum Storage Tank Trust Fund are outstanding, the fee shall be collected at the maximum rate. However, when the balance of the Petroleum Storage Tank Trust Fund, as adjusted to reflect the obligations and liabilities of the fund, reaches fifteen million dollars (\$15,000,000), the rate shall drop at the beginning of the next calendar quarter to such rate as the Arkansas Pollution Control and Ecology Commission determines is necessary to maintain a fifteen million dollar (\$15,000,000) adjusted balance.

(B) The rate shall be increased at the beginning of the next calendar quarter when the fund balance, as adjusted to reflect the obligations and liabilities of the Petroleum Storage Tank Trust Fund, drops to twelve million dollars (\$12,000,000) or less and remains at the higher amount, not to exceed three-tenths of one cent (0.3¢), until the adjusted fund balance reaches fifteen million dollars (\$15,000,000).

(3) The commission shall review the Petroleum Storage Tank Trust Fund balance, as adjusted to reflect the obligations and liabilities of the Petroleum Storage Tank Trust Fund, at least quarterly and report the rate of collection for the fee for the upcoming quarter to the director.

(4) During any period when bonds for the benefit of the Petroleum Storage Tank Trust Fund are outstanding, the fee shall be collected at a rate of three-tenths of one cent (0.3¢) for each gallon irrespective of the balance of the Petroleum Storage Tank Trust Fund.

(h)(1) During any period when bonds are outstanding for the benefit of the Petroleum Storage Tank Trust Fund, the fee shall be deposited into the Petroleum Storage Tank Trust Fund Revenue Bond Debt Service Fund as provided in the Petroleum Storage Tank Trust Fund Bond Financing Act, § 15-5-1201 et seq.

(2) All other fees or moneys collected under this subchapter shall continue to be deposited into the Petroleum Storage Tank Trust Fund.

(i) All fees shall be subject to collection and enforcement of collection under the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1989, No. 173, § 4; 1989 951, § 5; 1995, No. 1054, § 3; 1997, No. (3rd Ex. Sess.), No. 65, §§ 5, 6; 1993, No. 641, § 4; 2005, No. 670, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Wright, In ronment and Small Business, 13 U. Ark. Storage Tank Funds We Trust: An Analysis of Their Role in Protecting the Envi- Little Rock L.J. 417.

8-7-907. Payments for corrective action.

(a)(1) No payment for corrective action shall be paid from the Petroleum Storage Tank Trust Fund until the owner or operator has expended seven thousand five hundred dollars (\$7,500) on corrective action for the occurrence, except in cases in which the Director of the Arkansas Department of Environmental Quality is using emergency authority under § 8-7-905(e). It is the intent of the General Assembly that this initial level of expenditure be considered the equivalent of an insurance policy deductible.

(2) Owners or operators of underground storage tanks must demonstrate financial responsibility for the seven-thousand-five-hundred-dollar deductible for corrective actions.

(b) Payment for corrective action shall not exceed one million five hundred thousand dollars (\$1,500,000) per occurrence.

(c) All payments for corrective action expenses of the owner or operator shall be made only following proof that:

(1)(A) At the time of discovery of the release the owner or operator had paid all fees required under state law or regulations applicable to petroleum storage tanks.

(B) If the petroleum storage tank is an aboveground storage tank, the owner or operator may be eligible for reimbursement if the aboveground storage tank is registered under § 8-7-813 and all fees required under state law or regulation have been paid;

(2) The corrective action expenses submitted for reimbursement consist of items and amounts that are in accord and compliant with Arkansas Department of Environmental Quality regulations; and

(3) The owner or operator cooperated fully with the department in corrective action to address the release.

(d) Payment for corrective action may be denied if the storage tank owner or operator fails to report a release as required by regulation promulgated by the Arkansas Pollution Control and Ecology Commission, and the failure to report the release causes a delay in the corrective action that contributes to an adverse impact to the environment.

(e)(1) The commission may provide through rule and regulation for interim payments for corrective action.

(2) Interim payments shall be subject to these limitations:

(A) Proof of compliance with the requirements of subdivisions (c)(1)-(3) of this section must be provided;

(B) Specific assurances must be provided that an approved corrective action plan, department directive, or order is being implemented and followed to date; and

(C)(i) Interim payments shall consist of payment of an amount not to exceed ninety percent (90%) of one million five hundred thousand dollars (\$1,500,000).

(ii) The remaining ten percent (10%) shall be released only upon final payment for corrective action concerning the occurrence.

(f)(1) In the event moneys are expended from the fund for corrective action and the owner or operator was not at the time of the occurrence eligible to receive reimbursement for corrective action, as defined by this subchapter and regulations promulgated under this subchapter, the department may recover from the owner or operator the amount of moneys expended from the fund for corrective action by filing an action in the appropriate circuit court or by using the administrative procedures set forth in § 8-7-804.

(2)(A) The department also has a right of subrogation:

(i) To any insurance policies in existence at the time of the occurrence to the extent of any rights the owner or operator of a site may have had under that policy; and

(ii) Against any third party who caused or contributed to the occurrence.

(B) The right of subrogation shall apply to sites where corrective action is taken by:

(i) Owners or operators; or

(ii) The department.

(C) As used in this subsection, "third party" does not include a former owner or operator of the site where corrective action is taken.

(g)(1) Unknown petroleum storage tanks that have satisfied the requirements of subdivisions (c)(1)-(3) of this section shall be eligible for reimbursement for corrective action as provided by this section if:

(A) The unknown petroleum storage tank is discovered while removing, upgrading, or replacing a petroleum storage tank meeting the requirements of subsection (c) of this section or while performing petroleum investigation or corrective action activities required by federal or state laws and the petroleum storage tank meeting the requirements of subsection (c) of this section is located on the same property or facility; or

(B) The unknown petroleum storage tank is located on a right-of-way purchased by a city, county, or state governmental agency or entity and is discovered during construction in such a right-of-way.

(2) Eligibility for reimbursement of unknown petroleum storage tanks will be conditioned on the payment of three hundred seventy-five dollars (\$375) to the department.

(h) If the owner or operator is found to have been in noncompliance with any state and federal laws and regulations relating to storage

tanks at the time of the occurrence, the department may assess a penalty in accordance with its applicable policies and procedures.

(i)(1) An owner or operator determined to be eligible for payment for corrective action for a release from a qualified storage tank or the department may transfer the eligibility to a subsequent owner or operator of the qualified storage tank if the department determines that the subsequent owner or operator has the financial and legal capacity to complete the corrective action and the subsequent owner or operator agrees in writing to assume responsibility for corrective action.

(2) A transfer under subdivision (i)(1) of this section shall not affect the potential liability of the owner or operator for undertaking any required corrective action.

(3) The removal of the storage tank after initiation of corrective action shall not bar the transfer of eligibility as provided in subdivision (i)(1) of this section.

(j)(1) A lender or secured creditor that holds ownership in a storage tank primarily to protect a security interest on the storage tank or the facility on which it is located, or both, is eligible for payment for corrective action if the lender or secured creditor assumes responsibility for completing the corrective action of a release from a qualified storage tank.

(2) If an owner or operator is performing corrective action to the department's satisfaction, a lender or secured creditor is not eligible to assume responsibility for corrective action or to receive payment for corrective action.

(3) Subdivisions (j)(1) and (2) of this section do not affect the liability of the owner or operator for undertaking any required corrective action.

(k)(1) The commission shall provide through rule and regulation for a procedure under which an owner or operator or a consultant can be eligible for payment for the purchase of equipment needed for undertaking corrective action.

(2) The procedure adopted under subdivision (k)(1) of this section shall include without limitation:

(A) Depreciation schedules;

(B) Reasonable rent as appropriate;

(C) Evaluation of residual value of equipment; and

(D) Providing for reversion of equipment to the department if the responsibility for the maintenance or payment for the equipment is not met.

(3) The eligibility for payment of a consultant applies only to this subsection.

History. Acts 1989, No. 173, § 7; 1989 (3rd Ex. Sess.), No. 65, §§ 8, 9; 1993, No. 951, § 6; 1997, No. 642, § 1; 1997, No. 1027, § 1; 1999, No. 599, § 1; 2001, No. 1471, §§ 4, 5; 2003, No. 1114, § 3; 2005, No. 670, § 2; 2005, No. 1678, § 1; 2009, No. 282, §§ 4, 5; 2011, No. 809, § 1; 2013,

No. 406, § 2; 2015, No. 699, § 1; 2017, No. 257, § 1; 2017, No. 584, § 2.

Amendments. The 2013 amendment substituted "this subsection" for "subdivision (k)(1) of this section" in (k)(3).

The 2015 amendment inserted "or the department" in (i)(1).

The 2017 amendment by No. 257 inserted “qualified” following “operator of the” in (i)(1).

The 2017 amendment by No. 584 redesignated former (c)(1) as (c)(1)(A), and added (c)(1)(B).

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Wright, In Storage Tank Funds We Trust: An Analysis of Their Role in Protecting the Environment and Small Business, 13 U. Ark. Little Rock L.J. 417.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Environmental Law, 24 U. Ark. Little Rock L. Rev. 475.

8-7-908. Third-party claims.

(a)(1) No payment to any owner or operator against whom a third-party claim is brought for compensatory damages shall be paid from the Petroleum Storage Tank Trust Fund until the owner or operator has expended seven thousand five hundred dollars (\$7,500) on third-party claims for the occurrence, except in cases in which:

(A) The Director of the Arkansas Department of Environmental Quality is using his or her emergency authority under § 8-7-905(e); or

(B) The owner or operator has been discharged under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., or is determined by a court to be insolvent.

(2) It is the intent of the General Assembly that this initial level of expenditure be considered the equivalent of an insurance policy deductible.

(3) Owners and operators of underground storage tanks must demonstrate financial responsibility for the seven-thousand-five-hundred-dollar deductible for third-party liability costs.

(b) Payment for third-party claims shall not exceed one million dollars (\$1,000,000) per occurrence.

(c) All payments for third-party claims shall be made only following proof that:

(1) At the time of the occurrence, the owner or operator was in substantial compliance with the financial responsibility requirements;

(2) At the time of discovery of the release, the owner or operator had paid all fees required under state law or regulations applicable to petroleum storage tanks; and

(3) A valid final court order or valid final order of the Arkansas State Claims Commission establishing a judgment against the owner or operator for compensatory damages caused by an accidental release from a qualified storage tank has been entered.

(d)(1)(A) Any owner or operator against whom a third-party claim is filed in court or in the Arkansas State Claims Commission shall give written notice of the claim to the Arkansas Department of Environmental Quality no later than twenty (20) days after service of summons or receipt of notification of the claim from the Arkansas State Claims Commission.

(B) As a condition of eligibility, an owner or operator shall cooperate with and assist the department and, if applicable, the Attorney General's office in connection with the third-party claim.

(C) At a minimum, the cooperation shall include active participation by the owner or operator throughout the litigation and providing assistance as required by the department or the Attorney General's office during resolution of a third-party claim.

(D) In determining compliance with subdivisions (d)(1)(B) and (C) of this section, the director shall consider the owner's or operator's financial condition.

(2) Upon receipt of the notice, the department shall immediately notify the Attorney General, who shall have the right to intervene in any such lawsuit or proceeding in order to protect the interests of the state in the fund.

(3) Payment of third-party claims from the fund may be denied for any owner or operator who fails to give the department notice as required in this subsection.

(e)(1) The Arkansas Pollution Control and Ecology Commission may provide through rules or regulations for payments for third-party claims under settlement agreements between the parties without entry of a final court order or Arkansas State Claims Commission order.

(2) Settlement payments for third-party claims shall be subject to these limitations:

(A) Proof of compliance with the requirement of subdivisions (c)(1) and (2) of this section must be provided;

(B) Specific assurances, such as dismissal with prejudice of the cause of action, that payment shall release the owner or operator from all future liability to the third-party claimant for this occurrence must be provided; and

(C) The director must determine that litigation would result in costs to the fund which would exceed the settlement amount and, therefore, it would be in the best interests of the fund to pay the settlement amount.

(f)(1) In the event moneys are expended from the fund for third-party claims and the owner or operator was not at the time of the occurrence in substantial compliance, as defined by this subchapter and regulations promulgated under this subchapter, the department may recover from the owner or operator the amount of moneys expended from the fund for the third-party claim by filing an action in the appropriate circuit court or by using the administrative procedures set forth in § 8-7-804.

(2)(A) The department also has a right of subrogation:

(i) To any insurance policies in existence at the time of the occurrence to the extent of any rights the owner or operator of a site may have had under that insurance policy; and

(ii) Against any third party who caused or contributed to the occurrence.

(B) The right of subrogation shall apply to sites where corrective action is taken by:

- (i) Owners or operators; or
- (ii) The department.

(C) As used in this subsection, “third party” does not include a former owner or operator of the site where corrective action is taken.

(g)(1) Unknown petroleum storage tanks that have satisfied the requirements of subdivision (c)(3) of this section shall be eligible for reimbursement for third-party claims as provided by this section if:

(A) The unknown petroleum storage tank is discovered while removing, upgrading, or replacing a petroleum storage tank meeting the requirements of subsection (c) of this section or while performing petroleum investigation or corrective action activities required by federal or state laws and the petroleum storage tank meeting the requirements of subsection (c) of this section is located on the same property or facility; or

(B) The unknown petroleum storage tank is located on a right-of-way purchased by a city, county, or state governmental agency or entity and is discovered during construction in the right-of-way.

(2) Eligibility for reimbursement of unknown petroleum storage tanks will be conditioned on the payment of three hundred seventy-five dollars (\$375) to the department.

(h)(1) An owner or operator determined to be eligible for payment for third-party claims for a release may transfer the eligibility to an owner or operator that acquires the storage tank if the department determines that the subsequent owner or operator has the financial and legal capacity and has assumed in writing the responsibility for third-party liability.

(2) A transfer under subdivision (h)(1) of this section does not affect the potential liability of the owner or operator for payment of compensatory damages to a third party.

(3) The removal of the storage tank after initiation of corrective action shall not bar the transfer of eligibility as provided in subdivision (h)(1) of this section.

History. Acts 1989, No. 173, § 8; 1989 (3rd Ex. Sess.), No. 65, §§ 10-13; 1993, No. 951, § 7; 1997, No. 641, § 5; 1997, No. 642, § 2; 1997, No. 1027, § 2; 1999, No. 599, § 2; 2003, No. 1114, §§ 4-6; 2005, No.

1678, § 2; 2011, No. 809, § 2; 2013, No. 406, § 3.

Amendments. The 2013 amendment rewrote (h)(2).

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Wright, In Storage Tank Funds We Trust: An Analysis of Their Role in Protecting the Envi-

ronment and Small Business, 13 U. Ark. Little Rock L.J. 417.

8-7-909. Confidential treatment of information.

(a) Any records, reports, or information obtained by the Arkansas Department of Environmental Quality or the department’s employees in the administration of this subchapter, except release data, shall be

kept confidential upon a showing satisfactory to the Director of the Arkansas Department of Environmental Quality that the records, reports, or information would constitute a trade secret under § 4-75-601 et seq.

(b) As necessary to carry out the provisions of this subchapter, information afforded confidential treatment may be transmitted under a continuing claim of confidentiality to other officers or employees of the state or of the United States if the owner or operator of the facility to which the information pertains is informed of the transmittal and if the information has been acquired by the department under the provisions of this subchapter.

(c) The provisions of this section shall not be construed to limit the department’s authority to release confidential information during emergency situations.

(d) Any violation of this section shall be unlawful and shall constitute a misdemeanor.

History. Acts 1993, No. 951, § 8.
Cross References. Misdemeanors, § 5-1-107.

SUBCHAPTER 10 — PUBLIC EMPLOYEES’ CHEMICAL RIGHT TO KNOW ACT

SECTION.	SECTION.
8-7-1001. Title.	8-7-1009. Outreach activities of the director.
8-7-1002. Legislative findings and purpose.	8-7-1010. Rights of public employees.
8-7-1003. Definitions.	8-7-1011. Rulemaking.
8-7-1004. Duties of public employers.	8-7-1012. Trade secrets.
8-7-1005. Labeling — Definition.	8-7-1013. Complaints and investigations.
8-7-1006. Material safety data sheets.	8-7-1014. Enforcement.
8-7-1007. Workplace chemical lists.	8-7-1015. Cause of action — Attorney’s fees.
8-7-1008. Employee information and training.	8-7-1016. No effect on other legal duties.

Effective Dates. Identical Acts 1991, Nos. 556 and 1172, § 20: July 1, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that it is essential to provide the public employees of the state with critical information about hazardous chemicals to

which they may be exposed. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall take effect on July 1, 1991.”

8-7-1001. Title.

The provisions of this subchapter shall be known and may be cited as the “Public Employees’ Chemical Right to Know Act”.

History. Acts 1991, No. 556, § 1; 1991, No. 1172, § 1.

8-7-1002. Legislative findings and purpose.

(a) The General Assembly finds that the proliferation and variety of hazardous chemicals present in government employment may affect the health, safety, and welfare of public employees of the State of Arkansas.

(b) The General Assembly also finds that most private employers, in compliance with United States Occupational Safety and Health Administration regulations, provide their employees with training, information, and other protections concerning chemical hazards, but that public employees of the State of Arkansas and its political subdivisions are not subject to United States Occupational Safety and Health Administration regulations and do not receive the benefits of these protections.

(c) It is the purpose of this subchapter to provide public employees access to training and information concerning hazardous chemicals to enable them to minimize their exposure to such hazardous chemicals and protect their health, safety, and welfare.

History. Acts 1991, No. 556, § 2; 1991, No. 1172, § 2.

8-7-1003. Definitions.

(a) As used in this subchapter:

(1) “Chemical manufacturer” means an employer with a workplace where chemicals are produced for use or distribution;

(2) “Director” means the Director of the Department of Labor or his or her designee;

(3) “Distributor” means a business, other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to employers;

(4) “Exposure” or “exposed” means that an employee is subjected to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contact, or absorption, etc.), and includes potential, e.g., accidental or possible, exposure;

(5) “Hazard Communication Standard” means the Hazard Communication Standard adopted by the United States Occupational Safety and Health Administration and codified in the Code of Federal Regulations at 29 C.F.R. § 1910.1200, as of July 1, 1991;

(6) “Hazardous chemical” means any element, chemical compound, or mixture of elements or compounds which is a physical hazard or a health hazard as defined by the Hazard Communication Standard;

(7) “Label” or “labeling” means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals;

(8) “Material safety data sheet” means written or printed material concerning a hazardous chemical which is prepared in accordance with the Hazard Communication Standard;

(9)(A) “Public employee” means any employee of a public employer who may be exposed to hazardous chemicals in the workplace under normal operating conditions or foreseeable emergencies.

(B) Office workers and nonresident management are not generally included unless their job performance routinely involves potential exposure to hazardous chemicals;

(10) “Public employer” means the State of Arkansas and each political subdivision thereof, as defined in § 21-5-603(b);

(11) “Trade secret” is defined in accordance with § 4-75-601(4);

(12) “Work area” means a room or defined space in a workplace where hazardous chemicals are produced or used and where public employees are present;

(13) “Workplace” means an establishment, job site, or project at one (1) geographical location containing one (1) or more work areas under a public employer’s control or direction; and

(14) “Workplace chemical list” means a list of hazardous chemicals in a workplace developed pursuant to § 8-7-1007.

(b) All other definitions of the Hazard Communication Standard as they exist on the date of enactment of this subchapter are hereby adopted and incorporated by reference.

History. Acts 1991, No. 556, § 3; 1991, No. 1172, § 3.

Publisher’s Notes. In reference to the phrase “date of enactment of this subchapter”, Acts 1991, No. 556 was approved

and signed by the Governor on March 14, 1991, and became effective July 1, 1991. Acts 1991, No. 1172 was approved and signed by the Governor on April 10, 1991, and became effective on July 15, 1991.

8-7-1004. Duties of public employers.

Each public employer shall do the following:

(1) Post adequate notice, as provided by the Director of the Department of Labor, at locations where notices are normally posted, informing public employees about their rights under this subchapter;

(2) Ensure proper hazardous chemical labeling in accordance with § 8-7-1005;

(3) Maintain and make available material safety data sheets in accordance with § 8-7-1006;

(4) Compile and maintain a workplace chemical list in accordance with § 8-7-1007;

(5) Provide public employee information and training in accordance with § 8-7-1008; and

(6) Handle trade secrets in accordance with § 8-7-1012.

History. Acts 1991, No. 556, § 4; 1991, No. 1172, § 4.

8-7-1005. Labeling — Definition.

(a) Existing labels on containers of hazardous chemicals shall not be removed or defaced.

(b)(1) If a public employer transfers a hazardous chemical from the original container to another container, the public employer shall reproduce or otherwise place on the container to which the hazardous chemical was transferred the identity of the hazardous chemical and appropriate hazard warnings.

(2) However, if such hazardous chemical is regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq., or the Arkansas Pesticide Control Act, § 2-16-401 et seq., then such public employer shall reproduce on the container to which such hazardous chemical was transferred the chemical name or common name on the original container.

(c) A public employer is not required to label portable containers into which hazardous chemicals are transferred from labeled containers and which are intended only for the immediate use of the public employee who performs the transfer. Public employees shall not be required to work with a hazardous chemical from an unlabeled container except for a portable container intended for immediate use by the public employee who placed the hazardous chemical into the portable container. As used in this subsection, "unlabeled container" means a container which is not labeled in accordance with this section or the Hazard Communication Standard.

History. Acts 1991, No. 556, § 5; 1991, No. 1172, § 5.

8-7-1006. Material safety data sheets.

(a) Chemical manufacturers and distributors shall provide public employers which purchase a hazardous chemical from them with an appropriate material safety data sheet prior to or with their initial shipment of the hazardous chemical and with the first shipment after the material safety data sheet for the hazardous chemical is updated.

(b) Public employers shall maintain the most current material safety data sheet received from chemical manufacturers or distributors for each hazardous chemical in the workplace. If a material safety data sheet has not been provided by the chemical manufacturer or distributor at the time the hazardous chemicals are received at the workplace, the public employer shall request one in writing from the chemical manufacturer or distributor within five (5) business days.

(c) Material safety data sheets shall be readily available upon request to public employees and their designated representatives.

(d)(1) If a material safety data sheet for a hazardous chemical is not readily available upon request, a public employee or his or her designated representative may submit a written request for the material safety data sheet to the public employer. The public employer, within three (3) business days, either shall furnish a copy of the requested material safety data sheet to the requester or, if the requested material safety data sheet is not in the public employer's possession, shall demonstrate to the requester that the public employer has made an

effort to obtain the material safety data sheet from the distributor, chemical manufacturer, or other source.

(2) If after two (2) weeks from receipt of the request the public employer has not furnished the requester with the requested material safety data sheet, the public employer shall not require the public employee to work with the hazardous chemical for which the material safety data sheet was requested until the material safety data sheet is furnished, unless:

(A) The manufacturer of the substance for which the material safety data sheet was requested furnishes a written statement that the substance is not a hazardous chemical as defined in § 8-7-1003;

(B) The public employer can demonstrate to the public employee that the material safety data sheet cannot be obtained through no fault of the public employer; or

(C) The public employer can demonstrate to the public employee that the material safety data sheet will be furnished by a date specified by the public employer within one (1) additional week, provided that the public employee shall not be required to work with the hazardous chemical if the material safety data sheet is not furnished by the date specified.

(3) If a public employee declines to work with a hazardous chemical as authorized by this subsection, he or she shall not be penalized. Reassignment of a public employee to other work at equal pay and benefits shall not be considered a penalty under this subsection.

(e) A public employer, chemical manufacturer, or distributor shall provide a copy of a material safety data sheet to the Director of the Department of Labor upon request.

(f) A public employer, chemical manufacturer, or distributor may meet the requirements of this section with respect to a hazardous chemical which is a mixture either by providing a material safety data sheet for each element or compound in the mixture which is a hazardous chemical or by providing a material safety data sheet for the mixture itself. If more than one (1) mixture has the same element or compound, only one (1) material safety data sheet for that element or compound is necessary.

History. Acts 1991, No. 556, § 6; 1991, No. 1172, § 6.

8-7-1007. Workplace chemical lists.

(a) Each public employer shall compile and maintain a workplace chemical list which shall contain the following information for each hazardous chemical normally used, generated, or stored in the workplace in an amount equal to or greater than fifty-five gallons (55 gals.) or five hundred pounds (500 lbs.):

(1) The chemical name or common name used on the material safety data sheet or the container label;

(2) The Chemical Abstracts Service number for such hazardous chemical if such Chemical Abstracts Service number is included on the material safety data sheet; and

(3) The work area or workplace in which the hazardous chemical is normally used, generated, or stored.

(b) Each public employer shall file the workplace chemical list with the Director of the Department of Labor no later than ninety (90) days after July 1, 1991, and shall update the workplace chemical list as necessary, but in any case by July 1 of each subsequent year.

(c) A public employer may meet the requirements of this section with respect to a hazardous chemical which is a mixture either by identifying on the workplace chemical list each element or compound in the mixture which is a hazardous chemical or by identifying on the workplace chemical list the mixture itself. If more than one (1) mixture has the same element or compound, only one (1) listing of the element or compound is necessary.

History. Acts 1991, No. 556, § 7; 1991, No. 1172, § 7.

8-7-1008. Employee information and training.

(a) Each public employer shall provide an information and training program for its public employees as defined in § 8-7-1003. Additional instruction shall be provided whenever a new hazard is introduced into their work area or whenever new and significant information is received by the public employer concerning the hazards of a chemical. New or newly assigned public employees shall be provided training before working in a work area containing hazardous chemicals.

(b)(1) The information and training program provided pursuant to this section shall be developed in accordance with regulations to be promulgated by the Director of the Department of Labor pursuant to § 8-7-1011 within six (6) months after July 1, 1991.

(2) The regulations shall include, at a minimum, requirements concerning:

(A) Information on interpreting labels and material safety data sheets and the relationship between these two (2) methods of hazard communication;

(B) The location and availability of the workplace chemical list and material safety data sheets;

(C) Any operations in a public employee's work area where hazardous chemicals are present;

(D) The physical and health hazards of the hazardous chemicals in the work area;

(E) Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area, such as monitoring conducted by the public employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.;

(F) The measures public employees can take to protect themselves from these hazards, including specific procedures the public employer has implemented to protect public employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used;

(G) Frequency of training;

(H) General safety instructions on the handling, cleanup, and disposal of hazardous chemicals; and

(I) Public employees' rights under this subchapter.

(c) Training programs addressing each of the requirements of subsection (b) of this section and conducted in full compliance with Title III of the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § 11001 et seq., shall be deemed to meet the requirements of this section.

(d) Public employers shall keep a record of the dates of training sessions given to their public employees.

(e) Each public employer shall conduct the initial information and training program required pursuant to this section within one (1) year after July 1, 1991. This program may be conducted with the assistance of the director pursuant to § 8-7-1009.

(f) The director shall have authority to promulgate rules and regulations in accordance with § 8-7-1011:

(1) To exempt public employers from providing the information and training otherwise required by this section to public employees with special skills and knowledge concerning hazardous chemicals, if such special skills and knowledge would make the information and training unnecessary; and

(2) To require public employers to provide refresher training for public employees in workplaces or in circumstances in which the director reasonably determines such refresher training to be necessary and appropriate.

History. Acts 1991, No. 556, § 8; 1991, No. 1172, § 8.

8-7-1009. Outreach activities of the director.

(a) The Director of the Department of Labor shall develop and give each public employer a suitable form of notice providing public employees with information regarding their rights under this subchapter.

(b) The director shall develop and maintain a general information and training assistance program to aid public employers. Such information and assistance shall be made available to all public employers. As part of the program, the director may develop and distribute a supply of informational leaflets on public employers' duties, public employees' rights, and the effects of hazardous chemicals. The director shall make available the basic materials for this program within nine (9) months after July 1, 1991.

(c) The director may contract with state universities or other public or private organizations to develop and implement the outreach program.

History. Acts 1991, No. 556, § 9; 1991, No. 1172, § 9.

8-7-1010. Rights of public employees.

(a) Public employees who may be exposed to hazardous chemicals shall be informed of such exposure and shall have access to the workplace chemical list, material safety data sheets for the hazardous chemicals on the workplace chemical list, and information and training as provided in this subchapter.

(b) No public employer shall discharge or cause to be discharged or otherwise discipline or discriminate against a public employee because the public employee has requested information, filed a complaint, assisted an inspector of the Director of the Department of Labor, or instituted or caused to be instituted any complaint or proceeding under or related to this subchapter or has testified or is about to testify in any such proceeding or has exercised any rights afforded by this subchapter on behalf of the public employee or other public employees, nor shall any pay, position, seniority, or other benefits to which the public employee may be entitled be lost because the public employee exercised rights afforded by this subchapter.

(c) Any waiver of the benefits or requirements of this subchapter shall be against public policy and shall be null and void. Any public employer's request or requirement that a person waive any rights under this subchapter as a condition of or in connection with employment shall constitute a violation.

History. Acts 1991, No. 556, § 10; 1991, No. 1172, § 10.

8-7-1011. Rulemaking.

(a) The Director of the Department of Labor may promulgate rules and regulations in accordance with the provisions of §§ 11-2-110, 11-2-112, and 11-2-113 to implement the provisions of this subchapter. This authority shall include, but not be limited to, the authority to implement changes corresponding to future amendments to the Hazard Communication Standard to maintain consistency between this subchapter and the Hazard Communication Standard.

(b) The director shall promulgate regulations within six (6) months after July 1, 1991, requiring public employers to carry out information and training programs for their public employees and specifying the minimum content of education and training programs as provided in § 8-7-1008.

History. Acts 1991, No. 556, § 11; 1991, No. 1172, § 11.

8-7-1012. Trade secrets.

(a) A public employer may withhold the specific chemical identity, including the chemical name and other specific identification of a hazardous chemical, from a material safety data sheet or workplace chemical list only if all the following conditions are met:

(1) The claim that the information indicates that the specific chemical identity is being withheld as a trade secret;

(2) The material safety data sheet or the chemical indicates that the specific chemical identity is being withheld as a trade secret;

(3) All information contained in the material safety data sheet concerning the properties and effects of the hazardous chemical is disclosed; and

(4) The specific chemical identity is made available to health professionals, employees, and their designated representatives under the same conditions as are set out in the Hazard Communication Standard, 29 C.F.R. § 1910.1200(i)(2)-(7), provided, the information disclosable to the United States Occupational Safety and Health Administration under the Hazard Communication Standard shall also be disclosable to the Director of the Department of Labor.

(b) The director, upon his or her initiative or upon request by a public employee, designated representative, or public employer, shall request any or all of the data substantiating the trade secret claim to determine whether the claim is valid. The director shall protect from disclosure all information coming into his or her possession that is marked as confidential and shall return all information so marked at the conclusion of his or her determination.

(c) Any information marked confidential pursuant to subsection (b) of this section shall not be disclosed during any administrative or judicial proceeding held pursuant to this section. Administrative hearings held pursuant to this section shall not be open to the public, but otherwise shall be held in a manner consistent with that provided for in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for hearings in contested cases. The proponent of disclosure shall also have the right to be heard.

(d) No employee of the State of Arkansas shall disclose any information designated as a trade secret other than within the provisions of this subchapter.

(e) Nothing in this section shall be construed as requiring the disclosure under any circumstances of process or percentages of mixture information that is a trade secret.

History. Acts 1991, No. 556, § 12; 1991, No. 1172, § 12.

8-7-1013. Complaints and investigations.

(a) Complaints received orally or in writing from public employees, their designated representatives, or public employers related to alleged violations of this subchapter shall be investigated in a timely manner by the Director of the Department of Labor.

(b) Officers or duly designated representatives of the director shall have the right of entry into any workplace or work area of a public employer during normal business hours to inspect and investigate complaints within reasonable limits and in a reasonable manner.

(c) The director shall have the same powers, duties, and authority to administer and enforce the provisions of this subchapter as are contained in §§ 11-2-108, 11-2-115, 11-2-116, and 11-2-118. Provided, however, that if there is a conflict between the provisions of this subchapter and the provisions of §§ 11-2-108, 11-2-115, 11-2-116, and 11-2-118, the provisions of this subchapter shall prevail.

History. Acts 1991, No. 556, § 13;
1991, No. 1172, § 13.

8-7-1014. Enforcement.

(a) If the Director of the Department of Labor determines that a public employer has violated a provision of this subchapter, the director shall issue an order to the official responsible for performing the duties required by this subchapter directing that official to cease and desist the act or omission constituting the violation. Such an order shall constitute prima facie evidence of a violation in any enforcement action filed pursuant to § 8-7-1015.

(b) If the director determines that a public employer has violated § 8-7-1008 relating to public employee information and training and within sixty (60) days of issuance of a cease and desist order the public employer has not remedied the violation, the director may conduct a program or programs to remedy the violation and require such public employer to reimburse the director for the cost of doing so.

(c) Violation of this subchapter by a public employer shall be cause for adverse personnel action against the supervisor or supervisors responsible for the violation, including, but not limited to, suspension, demotion, withholding of annual career service recognition payments, or, in the case of serious and repeated violations, termination. Issuance of a cease and desist order by the director shall not be a prerequisite for such adverse personnel action, but such action shall only be taken in accordance with the civil service laws and regulations.

History. Acts 1991, No. 556, § 14;
1991, No. 1172, § 14.

8-7-1015. Cause of action — Attorney's fees.

(a) Any citizen denied the rights granted to him or her by this subchapter may commence a civil action against a public employer or responsible official of a public employer in the Pulaski County Circuit Court or the circuit court of the residence of the aggrieved party, if an agency of the state is involved, or any of the circuit courts of the appropriate judicial districts when any other public employer is involved. Issuance of a cease and desist order by the Director of the Department of Labor shall not be a prerequisite to the commencement of such an action.

(b) Upon written application of the person denied the rights provided for in this subchapter or any interested party, the circuit court having jurisdiction shall fix a day the petition is to be heard within seven (7) days of the date of the application of the petitioner and shall hear and determine the case.

(c) The circuit courts shall have jurisdiction to restrain violations of this subchapter and to order all appropriate relief, including, but not limited to, the disclosure of chemical information, the rehiring or reinstatement of public employees discriminated against because of their exercise of their rights under this subchapter, and the payment of any compensation such public employees actually lost as a result of such violations.

(d) Those who refuse to comply with the orders of the circuit court shall be found guilty of contempt of court.

(e) In any action to enforce the rights granted by this subchapter or in any appeal therefrom, the court shall assess against the defendant reasonable attorney's fees and other litigation expenses reasonably incurred by a plaintiff who has substantially prevailed, unless the court finds that the position of the defendant was substantially justified or that other circumstances make an award of those expenses unjust. However, no expenses shall be assessed against the State of Arkansas or any of its agencies or departments. If the defendant has substantially prevailed in the action, the court may assess expenses against the plaintiff only upon a finding that the action was initiated primarily for frivolous or dilatory purposes.

History. Acts 1991, No. 556, § 15;
1991, No. 1172, § 15.

8-7-1016. No effect on other legal duties.

The provision of information to a public employee pursuant to the provisions of this subchapter shall not be construed to affect the liability of a public employer with regard to the health and safety of a public employee or other persons exposed to hazardous chemicals, nor shall it affect the public employer's responsibility to take any action to prevent the occurrence of occupational disease as required under any other provision of law. The provision of information to a public employee shall not affect any other duty or responsibility of a chemical manufac-

turer or distributor to warn ultimate users of a hazardous chemical under any other provision of law.

History. Acts 1991, No. 556, § 16;
1991, No. 1172, § 16.

SUBCHAPTER 11 — VOLUNTARY CLEANUP

SECTION.

8-7-1101. Declaration of policy.

8-7-1102. Definitions.

SECTION.

8-7-1103. Department's authority.

8-7-1104. Voluntary cleanup process.

Effective Dates. Acts 2003, No. 1193, § 2: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is an urgent need to return abandoned, idled, and underused industrial, commercial, and agricultural properties, otherwise known as Brownfield sites, to productive uses; that the state would benefit by allowing grant funds already received from the federal government, as well as future grant awards and

other moneys received by the Department of Environmental Quality, to be used to clean-up Brownfield sites; that a successful revolving loan fund program will assist the department to reach its goal of returning Brownfield sites to productive uses. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

8-7-1101. Declaration of policy.

The General Assembly finds and declares as follows:

(1) The redevelopment of abandoned industrial, commercial, or agricultural sites or abandoned residential property should be encouraged as a sound land use management policy to prevent the needless development of prime farmland, open spaces, and natural and recreation areas and to prevent urban sprawl;

(2) The redevelopment of abandoned sites should be encouraged so that these abandoned sites can be returned to useful, tax-producing properties to protect existing jobs and provide new job opportunities;

(3) Persons interested in redeveloping abandoned sites should have a method of determining what their legal liabilities and cleanup responsibilities will be as they plan the reuse of abandoned sites;

(4) Incentives should be put in place to encourage prospective purchasers to voluntarily develop and implement cleanup plans of abandoned sites without the need for adversarial enforcement actions by the Arkansas Department of Environmental Quality;

(5) The department now routinely determines, through its permitting policies, when contamination will and will not pose unacceptable risks to public health or the environment, and similar concepts are used in establishing cleanup policies for abandoned sites;

(6) Parties and persons responsible under the law for pollution at abandoned sites should perform remedial responses which are fully consistent with existing requirements;

(7) As an incentive to promote the redevelopment of abandoned industrial sites, persons not responsible for preexisting pollution at or contamination on abandoned industrial sites should meet alternative cleanup requirements if they acquire title after the nature of conditions at the abandoned industrial site has been disclosed and declare and commit to a specified future land use of the subject abandoned industrial site; and

(8)(A) Property transactions at times necessitate title acquisition prior to completion of the actions contemplated at § 8-7-1104(b)-(d) by persons not previously involved with the abandoned site or otherwise considered responsible parties for environmental conditions at an abandoned site.

(B) These persons should not be foreclosed from participation under the procedures enacted under this subchapter.

(C) Therefore, these persons, at the discretion of the director, may submit a letter of intent that will set forth the persons' desire to purchase the abandoned site and retain their eligibility for participation in the voluntary cleanup program established by this subchapter.

History. Acts 1997, No. 1042, § 1; 1999, No. 1164, § 108; 2001, No. 164, § 1; 2005, No. 1164, § 1.

8-7-1102. Definitions.

(a) As used in this subchapter:

(1) "Abandoned site" means a site on which industrial, commercial, or agricultural activity occurred and for which no responsible person can reasonably be pursued for a remedial response to clean up the site or residential property or when the Arkansas Department of Environmental Quality determines it is in the best interest of the citizens of Arkansas to promote redevelopment under this subchapter while continuing to pursue the responsible party or parties;

(2) "Implementing agreement" means a plan, order, memorandum of agreement, or other enforceable document issued by the department under provisions of the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., the Remedial Action Trust Fund Act, § 8-7-501 et seq., or this subchapter, to implement the voluntary cleanup process described in § 8-7-1104;

(3) "Industrial, commercial, or agricultural activity" means commercial, manufacturing, agricultural, or any other activity done to further the development, manufacturing, or distribution of goods and services, as well as soil cultivation and crop or livestock production, including, but not limited to, research and development, warehousing, shipping, transport, remanufacturing, repair, and maintenance of commercial machinery and equipment;

(4) "Property" means property and improvements, including:

(A) A facility as defined in 42 U.S.C. § 9601; and

(B) A site as defined in § 8-7-203;

(5) “Prospective purchaser” means a person who expresses a willingness to acquire an abandoned site and is not responsible for any preexisting pollution at or contamination on the abandoned site;

(6) “Residential property” means any real property used as a dwelling or property with four (4) or fewer dwelling units used exclusively for residential use; and

(7)(A) “Site assessment” means the site assessment to establish the baseline level of existing contamination on a site.

(B) At a minimum, the assessment shall identify the location and extent of contamination, the quantity or level of contamination, the type of contamination, the probable source of contamination, and the risk or threat associated with the contamination as described in § 8-7-1104.

(C) The assessment also shall include a description of the intended land use of the site.

(b) Any other terms of this subchapter not expressly defined shall have the same definitions as provided in § 8-7-203, § 8-7-304, § 8-7-403 [repealed], or § 8-7-503, unless manifestly inconsistent with the provisions and remedial intent of this subchapter.

History. Acts 1997, No. 1042, § 1;
2001, No. 164, § 2; 2005, No. 1164, § 2.

8-7-1103. Department’s authority.

(a) The Arkansas Department of Environmental Quality shall have authority regarding a voluntary response program to provide the following:

(1) Opportunities for technical assistance for voluntary response actions;

(2) Adequate opportunities for public participation, including prior notice and opportunity for comment in appropriate circumstances, in selecting response actions;

(3) Streamlined procedures to ensure expeditious voluntary response actions;

(4) Oversight and enforcement authorities or other mechanisms that are adequate to ensure that:

(A) Voluntary response actions will protect human health and the environment and be conducted in accordance with applicable federal and state laws; and

(B) If the person conducting the voluntary response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed;

(5) Mechanisms for approval of a voluntary response action plan; and

(6)(A) A requirement for certification or similar documentation from the department to the person conducting the voluntary response action indicating that the response is complete.

(B) This certification shall document any conditions, restrictions, or limitations on the release from liability for contamination existing at the site before the department and the prospective purchaser enter into an implementing agreement.

(b) The department may establish and administer a revolving loan fund to make secured and unsecured loans or grants to eligible participants for the purpose of financing the assessment, investigation, or remedial actions at abandoned industrial, commercial, or agricultural sites, or at abandoned residential property.

History. Acts 1997, No. 1042, § 1; 2003, No. 1193, § 1; 2005, No. 1164, § 3.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Environmental Law, 26 U. Ark. Legislation, 2003 Arkansas General As- Little Rock L. Rev. 405.

8-7-1104. Voluntary cleanup process.

(a) This section applies:

(1) To a person who:

(A) Is a prospective purchaser of an abandoned industrial, commercial, or agricultural property with known or suspected contamination;

(B) Is a prospective purchaser of abandoned residential property;

(C) Did not by act or omission cause or contribute to any release or threatened release of a hazardous substance on or from the identified abandoned site or is otherwise considered to be a responsible party pursuant to § 8-7-512(a)(2)-(4); and

(D) Will reuse or redevelop the property for industrial, commercial, agricultural, or residential uses which will sustain or create employment opportunities or otherwise augment the local or state economy and tax base, or both; or

(2) To a person who:

(A) Is not a responsible party pursuant to § 8-7-512(a)(2)-(4);

(B) Submits a letter of intent to participate; and

(C) Subsequently acquires title to an abandoned site prior to completion of an implementing agreement as set forth in subsection (d) of this section.

(b) A comprehensive site assessment shall be completed to establish the baseline of existing contamination on the site.

(c) Following completion of a comprehensive site assessment, the Arkansas Department of Environmental Quality shall determine whether the site assessment adequately identifies the environmental risks posed by the abandoned site.

(d)(1) The department and the prospective purchaser shall enter into an implementing agreement based on the results of the comprehensive site assessment.

(2) The implementing agreement shall establish cleanup liabilities and obligations for the abandoned site.

(3) The prospective purchaser shall provide notice of the implementing agreement in a newspaper of general circulation that serves the area in which the abandoned site is located.

(4) The notice shall be subject to the approval of the department.

(5) The implementing agreement shall establish the intended use of the property.

(6) The description of the intended use shall identify the abandoned site and the nature of the activity that the prospective purchaser proposes for the abandoned site.

(e) Once the prospective purchaser has acquired legal title to the abandoned site, the purchaser will be responsible to:

(1)(A) Remediate, remove and properly dispose of, or manage, consistent with applicable requirements, any containerized hazardous substances existing on site at the time of purchase, including drummed waste, lagoons, and impoundments and wastes in above-ground and underground tanks, which may pose a threat of release.

(B) Wastes that are disposed or managed on site will remain subject to applicable requirements;

(2) Take all necessary steps as appropriate to prevent migration of hazardous substances beyond the property boundary, considering the factors specified at subsection (h) of this section; and

(3) Remedy any releases of hazardous substances as identified in the comprehensive site assessment required by subsection (b) of this section.

(f) For purposes of subdivision (e)(3) of this section, releases of hazardous substances are those conditions which pose either:

(1)(A) An unacceptable risk, either acute or chronic, to the health of employees or any other person likely to be exposed to the release from the abandoned site, based upon the intended site use described by the prospective purchaser in the comprehensive site assessment and described by the implementing agreement.

(B) A purchaser may not actually use the property in a manner which differs from the intended use identified in the implementing agreement contemplated by subsection (d) of this section, unless the department and purchaser agree to a modification of the implementing agreement; or

(2) An unacceptable risk to degrade either groundwaters or surface waters, or any risk to degrade the extraordinary resource waters of the State of Arkansas.

(g) A remedial action pursuant to subdivision (e)(3) of this section shall eliminate unacceptable risks and prevent degradation of groundwaters and surface waters which would cause the unacceptable risk or degradation, or both, described in subdivision (f)(2) of this section.

(h)(1) The selection of remedial action shall be approved by the department after reasonable notice and after opportunity for hearing and shall become an amendment to the implementing agreement entered into pursuant to subsection (d) of this section.

(2) Selection of a remedial action shall include consideration of the following factors:

- (A) The intended and allowable use of the abandoned site;
- (B) The ability of the contaminants to move in a form and manner which would result in exposure to humans and the surrounding environment at levels considered to be an unacceptable health risk as described in subdivisions (f)(1) and (2) of this section;
- (C) Consideration of the potential environmental risks of proposed alternative remedial action and its technical feasibility, reliability, and cost effectiveness;
- (D) When an imminent and substantial endangerment is posed; and
- (E) Whether institutional or engineering controls eliminate or partially eliminate the imminent and substantial endangerment or otherwise contain or prevent migration.

(3) Remedial actions pursuant to subdivision (e)(3) of this section are not required to provide for the removal or remediation of the conditions or contaminants causing a release or threatened release on the abandoned site if:

(A) Contaminants pose no unacceptable risk as described in subdivisions (f)(1) and (2) of this section, or if the remedial actions proposed in the site assessment and intended uses of the abandoned site will eliminate unacceptable risks as described in subdivisions (f)(1) and (2) of this section; or

(B) Activities required to allow the intended reuse or redevelopment of the abandoned site are in a manner which will protect public health and the environment as described in subdivisions (f)(1) and (2) of this section.

(i) Nothing in this section shall relieve the prospective purchaser, after acquisition of legal title to the abandoned site, of any liability for contamination later caused by the purchaser.

(j) A prospective purchaser of an abandoned site under this subchapter shall not be responsible for paying any fines or penalties levied against any person responsible for contamination on the abandoned site prior to the implementing agreement with the department.

(k)(1) Once the prospective purchaser has acquired legal title to the abandoned site, the purchaser shall take all the steps necessary to prevent aggravating or contributing to the contamination of the air, land, or water, including downward migration of contamination from any existing contamination on the abandoned site.

(2) The purchaser shall not use or redevelop the abandoned site in any way which is likely to interfere with subsequent remedial actions or in a manner that differs from the intended use established in the implementing agreement described in subsection (d) of this section.

(l) A restriction shall be placed on the deed for the property covered by this subchapter, which restricts the use of the property to activities and compatible uses that will protect the integrity of any remedial action measures implemented on the property.

(m) Upon written notice to the department, the implementing agreement, including all rights and cleanup liabilities entered into by the department and the prospective purchaser under subsection (d) of this section, is transferable in its entirety to all subsequent owners of the property who did not, by act or omission, cause or contribute to any release or threatened release of hazardous substances on the abandoned site.

(n) Subsequent owners shall receive a copy of the implementing agreement from the prospective purchaser and shall not use the abandoned site in a manner which is inconsistent with the intended use described in the implementing agreement authorized by subsection (d) of this section.

(o)(1) Within thirty (30) days of the date that the prospective purchaser acquires legal title to the abandoned site, the purchaser shall file a notice of the implementing agreement with the clerk of the circuit court in the county in which the abandoned site is located.

(2) Notice of any subsequent amendments to the implementing agreement shall also be filed with the clerk of the circuit court within thirty (30) days after their effective dates.

(3) The clerk of the circuit court shall docket and record the notice so that it appears in the purchaser's chain of title.

History. Acts 1997, No. 1042, § 1; 2001, No. 164, § 3; 2005, No. 1164, § 4.

SUBCHAPTER 12 — ABANDONED AGRICULTURAL PESTICIDE DISPOSAL ACT

SECTION.

8-7-1201. Title.

8-7-1202. Purpose.

8-7-1203. Definitions.

8-7-1204. Abandoned Pesticide Advisory Board.

SECTION.

8-7-1205. Powers and duties of the board.

8-7-1206. Abandoned pesticide disposal.

Cross References. Abandoned Agricultural Pesticide and Plant Regulator Disposal Trust Fund, § 19-5-998.

8-7-1201. Title.

This subchapter may be known and may be cited as the “Abandoned Agricultural Pesticide Disposal Act”.

History. Acts 1999, No. 1174, § 1.

8-7-1202. Purpose.

It is the purpose of this subchapter to protect the citizens of the state and the environment by providing for the safe and proper disposal of abandoned pesticides used in agriculture and for other uses. Furthermore, it is the purpose of this subchapter to create an Abandoned Pesticide Advisory Board to review and approve proposed pesticide disposal projects, select contractors to dispose of abandoned pesticides used in agriculture and for other uses, and approve payments from the Abandoned Agricultural Pesticide and Plant Regulator Disposal Trust Fund.

History. Acts 1999, No. 1174, § 1;
2001, No. 1130, § 1.

8-7-1203. Definitions.

As used in this subchapter:

(1) “Abandoned” means chemicals which are no longer used and for which there is no planned use;

(2) “Advisory board” means the Abandoned Pesticide Advisory Board;

(3) “Contractor” means a person who provides services for a fee involving the disposal of abandoned pesticides;

(4) “Fund” means the Abandoned Agricultural Pesticide and Plant Regulator Disposal Trust Fund;

(5) “Pesticide” means any substance or mixture of substances intended for prevention, destroying, repelling, or mitigating any pests, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and any substance or mixture of substances intended to be used as a spray adjuvant and for other uses; and

(6)(A) “Plant regulator” means any substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth of maturation or to otherwise alter the behavior of plants or the produce thereof.

(B) “Plant regulator” does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculates, or soil amendments.

History. Acts 1999, No. 1174, § 1;
2001, No. 1130, § 2.

8-7-1204. Abandoned Pesticide Advisory Board.

(a) There is created the Abandoned Pesticide Advisory Board.

(b) The Abandoned Pesticide Advisory Board shall be composed of up to six (6) members:

(1) One (1) member shall be a representative from the Arkansas Farm Bureau Federation;

(2) One (1) member shall be a representative from the Arkansas Natural Resources Commission;

(3) One (1) member shall be a representative from the University of Arkansas Cooperative Extension Service;

(4) One (1) member shall be a representative from the Arkansas Department of Environmental Quality;

(5) One (1) member may be a representative from the United States Natural Resources Conservation Service; and

(6) One (1) member shall be a representative from the State Plant Board, who shall serve as the Chair of the Abandoned Pesticide Advisory Board.

(c) Members of the Abandoned Pesticide Advisory Board shall serve without compensation.

History. Acts 1999, No. 1174, § 1;
2001, No. 1130, § 3.

8-7-1205. Powers and duties of the board.

The Abandoned Pesticide Advisory Board shall have the following powers and duties:

(1) To identify any abandoned pesticides which shall be excluded from the collection and disposal program;

(2) To advise and make recommendations to the State Plant Board regarding projects for collecting and disposing of abandoned pesticides;

(3) To advise and make recommendations to the State Plant Board on the issuance of requests for proposals from contractors;

(4) To review and evaluate proposals for the collection and disposal of abandoned pesticides;

(5) To select proposals for the collection and disposal of abandoned pesticides to be implemented; and

(6) To approve payments from the Abandoned Agricultural Pesticide and Plant Regulator Disposal Trust Fund for collection and disposal projects.

History. Acts 1999, No. 1174, § 1;
2001, No. 1130, § 4.

8-7-1206. Abandoned pesticide disposal.

(a)(1) Moneys received into the Abandoned Agricultural Pesticide and Plant Regulator Disposal Trust Fund shall be from gifts, grants, or funds from entities other than the State Plant Board and from a fee of fifty dollars (\$50.00) per registered pesticide per registrant per year levied by the State Plant Board for the specific purpose of funding the disposal of abandoned pesticides.

(2) This fee shall be known as the "Abandoned Pesticide Disposal Fee" and shall not be a part of the pesticide registration fee collected pursuant to § 2-16-407(f).

(3) The Abandoned Pesticide Disposal Fee shall not apply to products classified as:

- (A) “Sanitizers and disinfectants” by the State Plant Board;
- (B) Aerosol products which are not labeled for agricultural use;
- (C) Insect repellants which are labeled for use on the human body or clothing;
- (D) Silica gels and other nonvolatile ready-to-use paste, foam, or gel formulations of insecticidal baits;
- (E) Nonvolatile insecticidal baits in tamper-resistant bait stations;
- (F) Insecticidal flea and tick collars and spot-on flea treatments for dogs and cats; or
- (G) Insecticidal cattle ear tags.

(4) Collection of the Abandoned Pesticide Disposal Fee shall be discontinued upon completion of the abandoned pesticide collection program.

(5) Moneys received into the fund shall be utilized by the State Plant Board, as authorized by the Abandoned Pesticide Advisory Board, to pay for projects and other activities relating to the collection and disposal of abandoned pesticides and for administrative support.

(6) The total allocation of funds for administrative support shall not exceed two hundred fifty thousand dollars (\$250,000) per biennium.

(b)(1) The State Plant Board shall administer the program relating to the collection and disposal of abandoned pesticides, as authorized by the Abandoned Pesticide Advisory Board.

(2) The duties of the State Plant Board shall include:

- (A) Developing and issuing requests for proposals from contractors to collect and dispose of abandoned pesticides;
- (B) Contracting for the collection and disposal of abandoned pesticides; and
- (C) Paying contractors for services relating to the collection and disposal of abandoned pesticides.

History. Acts 1999, No. 1174, § 1;
2001, No. 1130, § 5.

**SUBCHAPTER 13 — PHASE I ENVIRONMENTAL SITE ASSESSMENT CONSULTANT
ACT**

SECTION.
8-7-1301. Title.
8-7-1302. Purpose.
8-7-1303. Definitions.

SECTION.
8-7-1304. Powers and duties.
8-7-1305 — 8-7-1310. [Repealed.]
8-7-1311. Fees.

8-7-1301. Title.

This subchapter shall be known and may be cited as the “Phase I Environmental Site Assessment Consultant Act”.

History. Acts 2005, No. 2141, § 1;
2007, No. 1018, § 1.

8-7-1302. Purpose.

It is the purpose of this subchapter to authorize the Arkansas Department of Environmental Quality to establish and administer a certification program to maintain a list of Phase I consultants who meet the minimum qualifications for an environmental professional who undertakes a Phase I environmental site assessment, referred to as “all appropriate inquiry” under the Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, as it exists on January 1, 2007, or a Phase I environmental site assessment under the American Society for Testing and Materials standard E1527-05 as in effect on January 1, 2007.

History. Acts 2005, No. 2141, § 1; 2007, No. 1018, § 1. Act, Pub. L. No. 107-118, referred to in this section, is codified at 42 U.S.C.

U.S. Code. The Small Business Liability Relief and Brownfields Revitalization §§ 9601, 9604, 9605, 9607, 9622, and 9628.

8-7-1303. Definitions.

As used in this subchapter:

(1) “Person” means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, venture, state or the United States Government or agency, or any other legal entity however organized;

(2) “Phase I consultant” means a person that performs a Phase I environmental site assessment for a fee or in conjunction with other services for which a fee is charged; and

(3) “Phase I environmental site assessment” means an assessment defined as “all appropriate inquiry” under the Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, and the rules promulgated under the Small Business Liability Relief and Brownfields Revitalization Act or a Phase I environmental site assessment as that term is used in the American Society for Testing and Materials standard E1527-00 as in effect on January 1, 2005.

History. Acts 2005, No. 2141, § 1; 2007, No. 827, § 120; 2007, No. 1018, § 1.

A.C.R.C. Notes. Pursuant to Acts 2007, No. 827, § 240, the amendment of § 8-7-1303 by Acts 2007, No. 1018, § 1, supersedes the amendment of § 8-7-1303 by Acts 2007, No. 827, § 120.

U.S. Code. The Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, referred to in this section, is codified at 42 U.S.C. §§ 9601, 9604, 9605, 9607, 9622, and 9628.

8-7-1304. Powers and duties.

(a) The Arkansas Department of Environmental Quality shall maintain and make available to the public a list of Phase I consultants who meet the minimum qualifications for an environmental professional who undertakes a Phase I environmental site assessment, referred to as “all appropriate inquiry” under the Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, and the rules

promulgated under the Small Business Liability Relief and Brownfields Revitalization Act.

(b) The Arkansas Pollution Control and Ecology Commission shall promulgate rules to implement this subchapter.

History. Acts 2005, No. 2141, § 1; 2007, No. 1018, § 1.

U.S. Code. The Small Business Liability Relief and Brownfields Revitalization

Act, Pub. L. No. 107-118, referred to in this section, is codified at 42 U.S.C. §§ 9601, 9604, 9605, 9607, 9622, and 9628.

8-7-1305 — 8-7-1310. [Repealed.]

A.C.R.C. Notes. Pursuant to Acts 2007, No. 827, § 240, the repeal of § 8-7-1305 by Acts 2007, No. 1018, § 1 supersedes the amendment of § 8-7-1305 by Acts 2007, No. 827, § 121.

Pursuant to Acts 2007, No. 827, § 240, the repeal of § 8-7-1306 by Acts 2007, No. 1018, § 1 supersedes the amendment of § 8-7-1306 by Acts 2007, No. 827, § 122.

Pursuant to Acts 2007, No. 827, § 240, the repeal of § 8-7-1307 by Acts 2007, No. 1018, § 1 supersedes the amendment of § 8-7-1307(a)(2) by Acts 2007, No. 827, § 123, and the amendment of § 8-7-1307(b)(3) and (4) by Acts 2007, No. 827, § 124.

Publisher's Notes. These sections,

concerning applicability, certification categories, certification criteria and procedure, unlawful acts, disciplinary actions and suspension or revocation of certification, and rules and regulations and appeals and hearings, were repealed by Acts 2007, No. 1018, § 1. The sections were derived from the following sources:

8-7-1305. Acts 2005, No. 2141, § 1; 2007, No. 827, § 121.

8-7-1306. Acts 2005, No. 2141, § 1; 2007, No. 827, § 122.

8-7-1307. Acts 2005, No. 2141, § 1; 2007, No. 827, §§ 123, 124.

8-7-1308. Acts 2005, No. 2141, § 1.

8-7-1309. Acts 2005, No. 2141, § 1.

8-7-1310. Acts 2005, No. 2141, § 1.

8-7-1311. Fees.

(a)(1) Under regulations promulgated by the Arkansas Pollution Control and Ecology Commission, the Arkansas Department of Environmental Quality may assess fees to Phase I consultants who apply to be placed on the list maintained under § 8-7-1304.

(2) Fees shall be reasonable and appropriate and subject to periodic review.

(b) All fees collected under this subchapter shall be deposited into the Hazardous Waste Permit Fund, § 19-6-434.

(c) Fees collected under this subchapter shall be used for the purposes of administering this subchapter.

History. Acts 2005, No. 2141, § 1; 2007, No. 1018, § 1.

SUBCHAPTER 14 — CONTROLLED SUBSTANCES CONTAMINATED PROPERTY

CLEANUP ACT

SECTION.	SECTION.
8-7-1401. Title.	the manufacture of controlled substances.
8-7-1402. Professional cleanup of properties contaminated through	8-7-1403. Reporting of properties con-

SECTION.

taminated through the
manufacture of controlled
substances.

8-7-1404. Recordkeeping required.

SECTION.

8-7-1405. Notice — Cleanup — Residual
contamination.

8-7-1406. Remediated property.

8-7-1407. Penalties.

Cross References. Guidelines for
cleanup of clandestine methamphetamine
labs, § 20-7-132.

Methamphetamine-contaminated mo-

tor vehicles, § 5-64-510.

Property subject to forfeiture, § 5-64-
505.

8-7-1401. Title.

This subchapter shall be known and may be cited as the “Controlled Substances Contaminated Property Cleanup Act”.

History. Acts 2007, No. 864, § 1.

8-7-1402. Professional cleanup of properties contaminated through the manufacture of controlled substances.

(a) The Arkansas Department of Environmental Quality shall:

(1) Establish and administer a certification program to:

(A) Certify contractors who choose to undertake the inspection, sampling, remediation, and removal of contaminated materials from property contaminated through the manufacture of controlled substances; and

(B) Require as a condition of certification that the contractors demonstrate that they have qualifications required to undertake inspection, sampling, remediation, and removal of contaminated materials from property contaminated through the manufacture of controlled substances;

(2) Have established the certification program no later than May 1, 2008;

(3) By March 1, 2008, establish standards for the remediation of properties contaminated through the manufacture of controlled substances;

(4) Make the certification program rules and the remediation standards available to law enforcement officials and the public:

(A) On the department’s website; and

(B) In hard copy upon request to the department; and

(5) Annually review and update the remediation standards.

(b)(1) The Arkansas Pollution Control and Ecology Commission shall promulgate rules to implement the certification program for contractors in the inspection, sampling, remediation, and removal of contaminated materials from property contaminated through the manufacture of controlled substances.

(2) The rules promulgated by the commission under this section shall include without limitation:

- (A) Application forms for certification;
- (B) Continuing education requirements;
- (C) Professional and technical standards for certification;
- (D) Renewals of certification;
- (E) Procedures for revocation and other actions that affect the status of certification; and
- (F) Reasonable fees.

History. Acts 2007, No. 864, § 1.

8-7-1403. Reporting of properties contaminated through the manufacture of controlled substances.

(a) If a private property owner finds an abandoned laboratory for the manufacture of controlled substances on his or her property and there has been no active on-site law enforcement involvement, the private property owner shall notify local law enforcement for proper removal of contaminated material.

(b)(1) If a property owner finds or becomes aware of evidence of a laboratory for the manufacture of controlled substances on his or her property, the property owner shall have the property inspected in accordance with the guidelines established by the Arkansas Department of Environmental Quality under this subchapter by a contractor certified by the department under § 8-7-1402.

(2) If the contractor selected by the property owner under subdivision (b)(1) of this section verifies that a laboratory for the manufacture of controlled substances has been on the property, the contractor shall notify the department, and the department shall place the property on the contaminated properties list required under § 8-7-1404.

History. Acts 2007, No. 864, § 1.

8-7-1404. Recordkeeping required.

(a) By May 1, 2008, the Arkansas Department of Environmental Quality shall maintain records concerning properties contaminated through the manufacture of controlled substances.

(b) The department shall:

(1) Create a list of properties contaminated through the manufacture of controlled substances;

(2) Place a contaminated property on the contaminated properties list;

(3) Not determine that a property has been adequately remediated unless:

(A) The inspection, sampling, remediation, and removal of contaminated materials is performed:

(i) By or under the direction and responsible charge of an individual who has obtained a certification under the rules established by the Arkansas Pollution Control and Ecology Commission under this subchapter; or

(ii) By an employee of a public agency that has the responsibility of regulatory enforcement, emergency response, the protection of public health and welfare, or the protection of the environment while the employee is acting in the course of that employment; and

(B) The property has met the remediation standards developed by the department;

(4)(A) Post the results of a cleanup on the department's website for ten (10) working days after the department determines that the property has been adequately remediated.

(B) After the ten (10) working days of posting required under subdivision (b)(4)(A) of this section, the department shall remove from the department's website the formerly contaminated property and the results of the cleanup; and

(5) Remove a property from the list when the department finds that the property has been adequately remediated.

(c)(1) The department shall make the list of properties contaminated through the manufacture of controlled substances available to law enforcement officials and to the public:

(A) On the department's website; and

(B) In hard copy upon request to the department.

(2) The department shall keep hard copies of the information required under this section until the department has removed the property from the list of properties contaminated through the manufacture of controlled substances.

History. Acts 2007, No. 864, § 1; 2009, No. 1199, § 10.

8-7-1405. Notice — Cleanup — Residual contamination.

(a) If a law enforcement officer discovers a laboratory for the manufacture of controlled substances or arrests a person for having equipment used in manufacturing controlled substances on any real property, the law enforcement officer shall at the time of the discovery or arrest deliver a copy of the notice of removal required under subsection (d) of this section to:

(1) The owner of the real property if the owner is present at the time of the discovery or arrest;

(2) The on-site manager if the on-site manager is present at the time of the discovery or arrest;

(3) An on-site drop box if available; or

(4) In the case of a tenant-owner unit in a space-rental mobile home or a recreational vehicle park to:

(A) The occupant if the occupant is on site at the time of delivery; or

(B) The on-site park landlord if the on-site park landlord is present at the time of delivery.

(b)(1) If neither the owner nor the on-site manager of a property used in manufacturing controlled substances is on the property at the time of

the discovery of or arrest regarding a laboratory for the manufacture of controlled substances, the law enforcement officer shall make every reasonable effort to obtain the necessary contact information concerning the owner from the tenant, property manager, or neighbors.

(2) Within five (5) business days after the discovery of or arrest regarding a laboratory for the manufacture of controlled substances, the law enforcement officer shall send the notice of removal required under subsection (d) of this section by certified mail and regular mail to the owner of the property and the owner's on-site manager or, in the case of a space-rental mobile home or a recreational vehicle park, to the park landlord.

(3) The Arkansas Department of Environmental Quality shall cooperate with the Arkansas Crime Information Center to create a computer link that will allow the center to transfer to the department information from the National Clandestine Laboratory Seizure Report required under 28 C.F.R. Part 23 that is relevant to the notice of removal required under subsection (d) of this section.

(c)(1) At the time a law enforcement officer removes the gross contamination from property used as a laboratory for the manufacture of controlled substances, the law enforcement officer shall order the removal of all persons from the residually contaminated portion of the property or dwelling unit or, in the case of a space-rental mobile home or a recreational vehicle park, from the unit located on the property.

(2) After the law enforcement officer removes all persons under subdivision (c)(1) of this section, the law enforcement officer shall affix the notice of removal required under subsection (d) of this section in a conspicuous place on the property or, in the case of a space-rental mobile home or a recreational vehicle park, on the unit located on the property.

(d) The notice of removal under this section shall be in writing and shall contain all of the following:

(1) The word "WARNING" in large bold type at the top and the bottom of the notice;

(2) The date of the seizure and removal;

(3) The address or location of the property, including the identification of any dwelling unit, room number, apartment number, or vehicle number;

(4) The name of the law enforcement agency that seized the laboratory for the manufacture of controlled substances and the law enforcement agency's contact telephone number;

(5) A list of telephone numbers and contact information for all local and state agencies involved in the process of remediation;

(6) The contact numbers for local and state agencies associated with the cleanup of laboratories for the manufacture of controlled substances; and

(7) A statement that:

(A) A laboratory for the manufacture of controlled substances was discovered on the property;

(B) Chemicals or equipment, or both, that were used in the manufacture of controlled substances were seized at the property;

(C) Hazardous substances, toxic chemicals, or other waste products may still be present on the property or, in the case of a space-rental mobile home or a recreational vehicle park, in the unit located on the property;

(D)(i) It is unlawful for any unauthorized person to enter a residually contaminated property or, in the case of a space-rental mobile home or recreational vehicle park, the unit located on the property until the department establishes that the portion of the property identified as residually contaminated has been properly remediated.

(ii) The following persons are authorized to enter a residually contaminated property or, in the case of a space-rental mobile home or recreational vehicle park, the unit located on the property:

(a) An employee of the department;

(b) A law enforcement officer;

(c) The owner of a residually contaminated property; and

(d) A representative of an owner of a residually contaminated property if the representative has signed a waiver of liability;

(E) Failure to comply with this section is a violation of the department's rules pertaining to the cleanup of laboratories for the manufacture of controlled substances;

(F) Disturbing the notice of removal posted on the property is a violation of the department's rules concerning the cleanup of laboratories for the manufacture of controlled substances; and

(G) The owner of the property is responsible for remediating the residually contaminated portion of the property in compliance with the department's rules concerning the cleanup of laboratories for the manufacture of controlled substances.

History. Acts 2007, No. 864, § 1; 2009, No. 1199, § 11.

8-7-1406. Remediated property.

(a) After property contaminated through the manufacture of controlled substances is remediated and the property owner receives official notification from the Arkansas Department of Environmental Quality, no person, including the property owner, landlord, and real estate agent, is required to report or otherwise disclose the past contamination.

(b) Unless retention is mandated by federal law, the department shall destroy all copies of information required to be kept under this subchapter that refer to a specific property location once the property is officially removed from the contaminated properties list.

History. Acts 2007, No. 864, § 1.

8-7-1407. Penalties.

Any person who pleads guilty or nolo contendere to or is found guilty of violating § 8-7-1405(d)(7)(D) or § 8-7-1405(d)(7)(E) is guilty of a Class B misdemeanor.

History. Acts 2007, No. 864, § 1.

CHAPTER 8
INTERSTATE COMPACTS

SUBCHAPTER.

- 1. INTERSTATE ENVIRONMENTAL COMPACT.
- 2. CENTRAL INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT.

SUBCHAPTER 1 — INTERSTATE ENVIRONMENTAL COMPACT

SECTION.

- 8-8-101. Purpose.
- 8-8-102. Text of compact.

SECTION.

- 8-8-103. Supplementary agreement appropriations.

8-8-101. Purpose.

- (a) The General Assembly recognizes that:
 - (1) The purity and life-giving qualities of our environment are of primary concern to the people of Arkansas and to all Americans;
 - (2) The ultimate responsibility for the quality of the Arkansas environment rests upon the state government; and
 - (3) Ecological systems and environmental problems cross state boundaries.
- (b) Therefore, the General Assembly recognizes that the discharge of this responsibility can be enhanced by acting in concert and cooperation with our sister states and with the federal government, insofar as such cooperative governmental efforts are consistent with the laws of the State of Arkansas. For these reasons, the Interstate Environmental Compact is approved.

History. Acts 1971, No. 304, § 1; A.S.A. 1947, § 82-1974.

8-8-102. Text of compact.

The Interstate Environmental Compact is enacted into law and entered into with all other jurisdictions legally joining herein in the form substantially as follows:

ARTICLE 1.

- (1) Signatory states hereby find and declare:
 - (a) The environment of every state is affected with local, state, regional, and national interests and its protection, under appropriate

arrangements for intergovernmental cooperation, are public purposes of the respective signatories.

(b) Certain environmental pollution problems transcend state boundaries and thereby become common to adjacent states requiring cooperative efforts.

(c) The environment of each state is subject to the effective control of the signatories, and coordinated, cooperative, or joint exercise of control measures is in their common interests.

(2) The purposes of the signatories in enacting this compact are:

(a) To assist and participate in the national environment protection program as set forth in federal legislation; to promote intergovernmental cooperation for multistate action relating to environmental protection through interstate agreements; and to encourage cooperative and coordinated environmental protection by the signatories and the federal government;

(b) To preserve and utilize the functions, powers, and duties of existing state agencies of government to the maximum extent possible consistent with the purposes of the compact.

(3) (a) Nothing contained in this compact shall impair, affect, or extend the constitutional authority of the United States.

(b) The signatories hereby recognize the power and right of the Congress of the United States at any time by any statute expressly enacted for the purpose to revise the terms and conditions of its consent.

(4) Nothing contained in this compact shall impair or extend the constitutional authority of any signatory state, nor shall the police powers of any signatory state be affected except as expressly provided in a supplementary agreement under Article 4.

ARTICLE 2.

(1) This compact shall be known and may be cited as the Interstate Environmental Compact.

(2) For the purpose of this compact and of any supplemental or concurring legislation enacted pursuant or in relation hereto, except as may be otherwise required by the context:

(a) "State" shall mean any one of the fifty states of the United States of America, the Commonwealth of Puerto Rico and the Territory of the Virgin Islands, but shall not include the District of Columbia.

(b) "Interstate environment pollution" shall mean any pollution of a stream or body of water crossing or marking a state boundary, interstate air quality control region designated by an appropriate federal agency or solid waste collection and disposal district or program involving the jurisdiction of territories of more than one state.

(c) "Government" shall mean the governments of the United States and the signatory states.

(d) "Federal government" shall mean the government of the United States of America and any appropriate department, instrumentality,

agency, commission, bureau, division, branch, or other unit thereof, as the case may be, but shall not include the District of Columbia.

(e) "Signator" shall mean any state which enters into this compact and is a party thereto.

ARTICLE 3.

AGREEMENTS WITH THE FEDERAL GOVERNMENT AND OTHER AGENCIES. Signatory states are hereby authorized jointly to participate in cooperative or joint undertakings for the protection of the interstate environment with the federal government or with any intergovernmental or interstate agencies.

ARTICLE 4.

(1) Signatories may enter into agreements for the purpose of controlling interstate environmental problems in accordance with applicable federal legislation and under terms and conditions as deemed appropriate by the agreeing states under paragraph (6) and paragraph (8) of this article.

(2) RECOGNITION OF EXISTING NONENVIRONMENTAL INTERGOVERNMENTAL ARRANGEMENTS. The signatories agree that existing federal-state, interstate, or intergovernmental arrangements which are not primarily directed to environmental protection purposes as defined herein are not affected by this compact.

(3) RECOGNITION OF EXISTING INTERGOVERNMENTAL AGREEMENTS DIRECTED TO ENVIRONMENTAL OBJECTIVES. All existing interstate compacts directly relating to environmental protection are hereby expressly recognized, and nothing in this compact shall be construed to diminish or supersede the powers and functions of such existing intergovernmental agreements and the organizations created by them.

(4) MODIFICATION OF EXISTING COMMISSIONS AND COMPACTS. Recognition herein of multistate commissions and compacts shall not be construed to limit directly or indirectly the creation of additional multistate organizations or interstate compacts, nor to prevent termination, modification, extension, or supplementation of such multistate organizations and interstate compacts recognized herein by the federal government or states party thereto.

(5) RECOGNITION OF FUTURE MULTISTATE COMMISSIONS AND INTERSTATE COMPACTS. Nothing in this compact shall be construed to prevent signatories from entering into multistate organizations or other interstate compacts which do not conflict with their obligations under this compact.

(6) SUPPLEMENTARY AGREEMENTS. Any two (2) or more signatories may enter into supplementary agreements for joint, coordinated, or mutual environmental management activities relating to interstate pollution problems common to the territories of such states and for the establishment of common or joint regulation, management, services, agencies, or facilities for such purposes or may designate an appropriate agency to act as their joint agency in regard thereto. No supplementary agree-

ment shall be valid to the extent that it conflicts with the purpose of this compact and the creation of a joint agency by supplementary agreement shall not affect the privileges, powers, responsibilities, or duties under this compact of signatories participating therein as embodied in this compact.

(7) **EXECUTION OF SUPPLEMENTARY AGREEMENTS AND EFFECTIVE DATE.** The Governor is authorized to enter into supplementary agreements for the state, and his official signature shall render the agreement immediately binding upon the state;

Provided that:

(a) The legislature of any signatory entering into such a supplementary agreement shall at its next legislative session by concurrent resolution bring the supplementary agreement before it and by appropriate legislative action approve, reverse, modify, or condition the agreement of that state.

(b) Nothing in this agreement shall be construed to limit the right of Congress by act of law expressly enacted for that purpose to disapprove or condition such a supplementary agreement.

(8) **SPECIAL SUPPLEMENTARY AGREEMENTS.** Signatories may enter into special supplementary agreements with the District of Columbia or foreign nations for the same purposes and with the same powers as under Paragraph (6), Article 4, upon the condition that such nonsignatory party accept the general obligations of signatories under this compact. Provided, that such special supplementary agreements shall become effective only after being consented to by the Congress.

(9) **JURISDICTION OF SIGNATORIES RESERVED.** Nothing in this compact or in any supplementary agreement thereunder shall be construed to restrict, relinquish, or be in derogation of, any power or authority constitutionally possessed by any signatory within its jurisdiction, except as specifically limited by this compact or a supplementary agreement.

(10) **COMPLEMENTARY LEGISLATION BY SIGNATORIES.** Signatories may enact such additional legislation as may be deemed appropriate to enable its officers and governmental agencies to accomplish effectively the purposes of this compact and supplementary agreements recognized or entered into under the terms of this article.

(11) **LEGAL RIGHTS OF SIGNATORIES.** Nothing in this compact shall impair the exercise by any signatory of its legal rights or remedies established by the United States Constitution or any other laws of this nation.

ARTICLE 5.

(1) **CONSTRUCTION, AMENDMENT, AND EFFECTIVE DATE.** It is the intent of the signatories that no provision of this compact or supplementary agreement entered into hereunder shall be construed as invalidating any provision of law of any signatory and that nothing in this compact shall be construed to modify or qualify the authority of any signatory to enact or enforce environmental protection legislation within its jurisdiction

and not inconsistent with any provision of this compact or a supplementary agreement entered into pursuant hereto.

(2) The provisions of this compact or of agreements hereunder shall be severable and if any phrase, clause, sentence, or provisions of this compact, or such an agreement is declared to be contrary to the Constitution of any signatory or of the United States or is held invalid, the constitutionality of the remainder of this compact or of any agreement and the applicability thereof to any participating jurisdiction, agency, person, or circumstance shall not be affected thereby and shall remain in full force and effect as to the remaining participating jurisdictions and in full force and effect as to the signatory affected as to all severable matters. It is the intent of the signatories that the provisions of this compact shall be reasonably and liberally construed in the context of its purposes.

(3) Amendments to this compact may be initiated by legislative action of any signatory and become effective when concurred in by all signatories and approved by Congress.

(4) This compact shall become binding on a state when enacted by it into law, and such state shall thereafter become a signatory and party hereto with any and all states legally joining herein.

(5) A state may withdraw from this compact by authority of an act of its legislature one (1) year after it notifies all signatories in writing of an intention to withdraw from the compact. Provided, withdrawal from the compact affects obligations of a signatory imposed on it by supplementary agreements to which it may be a party only to the extent and in accordance with the terms of such supplementary agreements.

History. Acts 1971, No. 304, § 2; A.S.A. 1947, § 82-1975.

8-8-103. Supplementary agreement appropriations.

Any supplementary agreement entered into pursuant to Article 4 of the Interstate Environmental Compact and requiring the expenditure of funds or the assumption of an obligation to expend funds shall not become effective as to this state prior to the making of an appropriation therefor by the General Assembly, with the following exceptions:

(1) The Governor may use special appropriations as are made available for emergency purposes;

(2) The Governor may use any such funds as are made available to him or her by the United States Government or any other source specifically for the creation and implementation of supplemental agreements under this subchapter; and

(3) Where an agency of the state can better carry out the purpose for which it was created by the legislature by cooperative actions with other states under the terms of the compact, that agency may, with the consent of the Governor, expend funds appropriated to the agency for such purposes.

History. Acts 1971, No. 304, § 3; A.S.A. 1947, § 82-1976.

SUBCHAPTER 2 — CENTRAL INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT

SECTION.

8-8-201. Penalties.

8-8-202. Text of compact.

8-8-203. State member and alternate on commission.

SECTION.

8-8-204. [Repealed.]

8-8-205. Cooperation with commission.

8-8-206. Approval of rates at regional facility.

Cross References. Atomic energy and nuclear materials, § 15-10-301 et seq.

Hazardous waste management, § 8-7-201 et seq.

Low-level radioactive waste, § 8-7-601 et seq.

Radiation protection, § 20-21-201 et seq.

Effective Dates. Acts 1985, No. 929, § 3: Apr. 15, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the appointment of Arkansas members to the Central Interstate Low-Level Radioactive Waste Commission will assist in expediting the orderly function of the commission; and that the creation of a Low-Level Radioactive Waste Advisory Group will be able to provide Arkansas' members with timely and helpful technical advice on issues of concern to the commission. Therefore, an emergency is declared to exist and this act, being necessary for the preservation

of the public peace, health and safety shall be in full force and effect from and after the passage and approval."

Acts 1991, No. 847, § 6: Mar. 29, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the proper disposal of low level radioactive waste is becoming more and more important; that Arkansas has entered into the Central Interstate Low-Level Radioactive Waste Compact with several other states; that it is essential to the proper administration and operation of the Central Interstate Low-Level Radioactive Waste Compact that the compact be revised to accomodate current needs; that this act is designed to make such revisions and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

8-8-201. Penalties.

(a) Any person who violates any provision of this subchapter or commits any unlawful act under this subchapter shall be guilty of a misdemeanor. Upon conviction, that person shall be subject to imprisonment for not more than one (1) year or a fine of not more than ten thousand dollars (\$10,000), or subject to both such fine and imprisonment. Each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(b) Any person who violates any provision of this subchapter or commits any unlawful act under this subchapter shall be subject to a civil penalty in such amount as the court shall find appropriate, not to exceed twenty-five thousand dollars (\$25,000) per day of such violation, to the payment of any expenses reasonably incurred by the state in removing, correcting, or terminating any adverse effects resulting

therefrom, including the cost of the investigation, inspection, or survey establishing such violation or unlawful act, and the payment to the state of reasonable compensation of any actual damage resulting therefrom.

History. Acts 1983, No. 9, § 5; A.S.A. 1947, § 82-4405.

8-8-202. Text of compact.

The Central Interstate Low-Level Radioactive Waste Compact is hereby enacted into law and entered into by the State of Arkansas with any and all states legally joining therein in accordance with its terms, in the form substantially as follows:

ARTICLE I.

POLICY AND PURPOSE

The party states recognize that each state is responsible for the management of its nonfederal low-level radioactive wastes. They also recognize that the Congress, by enacting the Low-Level Radioactive Waste Policy Act (Public Law 96-573), has authorized and encouraged states to enter into compacts for the efficient management of wastes. It is the policy of the party states to cooperate in the protection of the health, safety, and welfare of their citizens and the environment, and to provide for and encourage the economical management of low-level radioactive wastes. It is the purpose of this compact to provide the framework for such a cooperative effort; to promote the health, safety, and welfare of the citizens and the environment of the region; to limit the number of facilities needed to effectively and efficiently manage low-level radioactive wastes and to encourage the reduction of the generation thereof; and to distribute the costs, benefits, and obligations among the party states. It is the policy of the party states that activities conducted by the commission are the formation of public policies and are therefore public business.

ARTICLE II.

DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

- (a) “Commission” means the Central Interstate Low-Level Radioactive Waste Compact Commission;
- (b) “Disposal” means the isolation and final disposition of waste;
- (c) “Decommissioning” means the measures taken at the end of a facility’s operating life to assure the continued protection of the public from any residual radioactivity or other potential hazards present at the facility;

(d) "Extended care" means the continued observation of a facility after closure for the purpose of detecting a need for maintenance, ensuring environmental safety, and determining compliance with applicable licensure and regulatory requirements and includes undertaking any action or cleanup necessary to protect public health and the environment;

(e) "Facility" means any site, location, structure, or property used or to be used for the management of waste;

(f) "Generator" means any person who, in the course of or as an incident to manufacturing, power generation, processing, medical diagnosis and treatment, biomedical research, other industrial or commercial activity, other research, or mining in a party state, produces or processes waste. "Generator" does not include any person who receives waste generated outside the region for subsequent shipment to a regional facility;

(g) "Host state" means any party state in which a regional facility is situated or is being developed;

(h) "Institutional control" means those activities carried out by the host state to physically control access to the disposal site following transfer of the license to the owner of the disposal site. These activities include, but are not limited to, environmental monitoring, periodic surveillance, minor custodial care, and other necessary activities at the site as determined by the host state and administration of funds to cover the costs for these activities. The period of institutional control will be determined by the host state but may not be less than one hundred (100) years following transfer of the license to the owner of the disposal site;

(i) "Low-level radioactive waste" or "waste" means, as defined in the Low-Level Radioactive Waste Policy Act (Public Law 96-573), radioactive waste not classified as: high-level radioactive waste; transuranic waste; spent nuclear fuel; or by-product material as defined in Section 11 e.2 of the Atomic Energy Act of 1954, as amended through 1978;

(j) "Management of waste" means the storage, treatment, or disposal of waste;

(k) "Notification of each party state" means transmittal of written notice to the Governor, presiding officer of each legislative body, and any other persons designated by the party state's commission member to receive such notice;

(l) "Party state" means any state which is a signatory party to this compact;

(m) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private;

(n) "Region" means the area of the party states;

(o) "Regional facility" means a facility which is located within the region and which has been approved by the commission for the benefit of the party states;

(p) "Site" means any property which is owned or leased by a generator and is contiguous to or divided only by a public or private way from the source of generation;

(q) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, or any other territorial possession of the United States;

(r) "Storage" means the holding of waste for treatment or disposal; and

(s) "Treatment" means any method, technique, or process, including storage for radioactive decay, designed to change the physical, chemical, or biological characteristics or composition of any waste in order to render such waste safer for transport or management, amenable for recovery, convertible to another usable material, or reduced in volume.

ARTICLE III.

RIGHTS AND OBLIGATIONS

(a) There shall be provided within the region one (1) or more regional facilities which together provide sufficient capacity to manage all wastes generated within the region. It shall be the duty of regional facilities to accept compatible wastes generated in and from party states, and meeting the requirements of this subchapter, and each party state shall have the right to have the wastes generated within its borders managed at such facility.

(b) To the extent authorized by federal law and host state law, a host state shall regulate and license any regional facility within its borders and ensure the extended care of such facility.

(c) Rates shall be charged to any user of the regional facility, set by the operator of a regional facility, and shall be fair and reasonable and be subject to the approval of the host state. Such approval shall be based upon criteria established by the commission.

(d) A host state may establish fees which shall be charged to any user of a regional facility, and which shall be in addition to the rates approved pursuant to section (c) of this article, for any regional facility within its borders. Any fees proposed by the host state shall be subject to a one hundred twenty-day prior notice to the commission with an opportunity to provide comments to the host state. Such fees shall be fair and reasonable and shall provide the host state with sufficient revenue to cover all anticipated present and future costs associated with any regional facility and a reasonable reserve for future contingencies, which are not covered by rates established in section (c) of this article including, but not limited to:

1. The licensure, operation, monitoring, inspection, maintenance, decommissioning, closure, institutional control, and extended care of a regional facility; and

2. Response, removal, remedial action or cleanup deemed appropriate and required by the host state as a result of a release of radioactive or hazardous materials from such regional facility; and

3. Premiums for property and third-party liability insurance; and

4. Protection of the public health, safety, and environment; and

5. Compensation and incentives to the host community;

6. Any amount due from a judgment or settlement involving a property or third-party liability claim for medical expenses and all other damages incurred as a result of personal injury or death, and damages or losses to real or personal property or the environment; and

7. Cost of defending or pursuing liability claims against any party or state.

The fees established pursuant to this section (d) of this article may include incentives for source and volume reduction and may be based on the hazard of the waste. Notwithstanding anything to the contrary in this compact, or in any state constitution, statute, or regulation, to the extent that such fees are insufficient to pay for any costs associated with a regional facility, including all costs under section (d) of Article III, all party states and any other state(s) whose generators use the regional facility, shall share liability for all such costs. However, there shall be no recovery from the states under section (d) of this article until all available funds, payments or in-kind services have been exhausted including:

i. Designated low-level radioactive waste funds managed by the host state; and

ii. Payable proceeds of insurance or surety policies applicable to a regional facility; and

iii. Proceeds of reasonable collection efforts against the regional facility operator(s); and

iv. Payments from or in-kind services by generators.

In the event any regional facility operator files or has filed against it a bankruptcy proceeding, then for purposes of determining whether or not reasonable collection efforts have been undertaken, the filing of such proceedings if not dismissed within sixty (60) days of filing shall be considered exhaustion of reasonable collection efforts with respect to such party. Recovery from the states under section (d) of Article III upon satisfaction of the exhaustion of available funds, payments, or in-kind services shall not preclude any state from further recovery of its costs from a facility operator, insurer, or generator. During the period of time that such reasonable collection efforts or exhaustion of available funds, payments, or in-kind services occur, any applicable statutes of limitation with respect to claims against any other parties or states will be deemed tolled and will not run. All costs or liabilities shared by a state shall be shared proportionately by comparing the volume of the waste received at a regional facility from the generators of each state with the total volume of the waste received at a regional facility from all generators.

(e) To the extent authorized by federal law, each party state is responsible for enforcing any applicable federal and state laws and regulations pertaining to the packaging and transportation of waste generated within or passing through its borders and shall adopt practices that will ensure that waste shipments originating within its borders and destined for a regional facility will conform to applicable packaging and transportation laws and regulations.

(f) Each party state has the right to rely on the good faith performance of each other party state.

(g) Unless authorized by the commission, it shall be unlawful after January 1, 1986, for any person:

(1) To deposit, at a regional facility, waste not generated within the region;

(2) To accept, at a regional facility, waste not generated within the region;

(3) To export from the region waste which is generated within the region; and

(4) To transport waste from the site at which it is generated except to a regional facility.

ARTICLE IV.

THE COMMISSION

(a) There is hereby established the Central Interstate Low-Level Radioactive Waste Compact Commission. The commission shall consist of one (1) voting member from each party state, except that each host state shall have two (2) at-large voting members and one (1) nonvoting member from the county in which the facility is located. All members shall be appointed according to the laws of each state. The appointing authority of each party state shall notify the commission in writing of the identity of its member and any alternates. Any alternate may act on behalf of the member only in the absence of such member or members. Each state is responsible for the expenses of its member of the commission.

(b) Except for the nonvoting member, each commission member shall be entitled to one (1) vote. Unless otherwise provided herein, no action of the commission shall be binding unless a majority of the total voting membership casts its vote in the affirmative.

(c) The commission shall elect from among its membership a chairman. The commission shall adopt and publish, in convenient form, bylaws and policies which are not inconsistent with this compact.

(d) The commission shall meet at least once a year, and shall also meet upon the call of the chairman, by petition of a majority of the membership, or upon the call of a host state member. All meetings of the commission shall be open to the public with reasonable advance publicized notice given, and such meetings shall be subject to those exceptions provided for within the open meetings laws of the host state. The commission shall adopt bylaws that are consistent in scope and principle with the open meetings law of the host state or, if there is no host state, the open meetings law of the state in which the commission headquarters are located.

(e) The commission may initiate any proceedings or appear as an intervenor or party in interest before any court of law, or any federal, state, or local agency, board, or commission that has jurisdiction over any matter arising under or relating to the terms and provisions of this

compact. The commission shall determine in which proceedings it shall intervene or otherwise appear and may arrange for such expert testimony, reports, evidence, or other participation in such proceedings as may be necessary to represent its views.

(f) The commission may establish such committees as it deems necessary for the purpose of advising the commission on any and all matters pertaining to the management of waste.

(g) The commission may employ and compensate a staff limited only to those persons necessary to carry out its duties and functions. The commission may also contract with and designate any person to perform necessary functions to assist the commission. Unless otherwise required by acceptance of a federal grant, the staff shall serve at the commission's pleasure irrespective of the civil service, personnel, or other merit laws of any of the party states or the federal government and shall be compensated from funds of the commission.

(h) Funding for the commission shall be as follows:

(1) The commission shall set and approve its first annual budget as soon as practicable after its initial meeting. Party states shall equally contribute to the commission budget on an annual basis, an amount not to exceed twenty-five thousand dollars (\$25,000) until surcharges are available for that purpose. Host states shall begin imposition of the surcharges provided for in this section as soon as practicable and shall remit to the commission funds resulting from collection of such surcharges within sixty (60) days of their receipt; and

(2) Each state hosting a regional facility shall annually levy surcharges on all users of such facilities, based on the volume and characteristics of wastes received at such facilities, the total of which:

(A) Shall be sufficient to cover the annual budget of the commission; and

(B) Shall be paid to the commission, provided, however, that each host state collecting such surcharges may retain a portion of the collection sufficient to cover the administrative costs of collection, and that the remainder be sufficient only to cover the approved annual budget of the commission.

(i) The commission shall keep accurate accounts of all receipts and disbursements. An independent certified public accountant shall annually audit all receipts and disbursements of commission funds and submit an audit report to the commission. Such audit report shall be made a part of the annual report of the commission required by this article.

(j) The commission may accept for any of its purposes and functions any and all donations, grants of money, equipment, supplies, materials, and services, conditional or otherwise from any person, and may receive, utilize, and dispose of same. The nature, amount, and conditions, if any, attendant upon any donation or grant accepted pursuant to this section, together with the identity of the donor, grantor, or lender, shall be detailed in the annual report of the commission.

(k) (1) Except as otherwise provided herein, nothing in this compact shall be construed to alter the incidence of liability of any kind for any

act, omission, course of conduct, or on account of any causal or other relationships. Generators, transporters of waste, owners, and operators of facilities shall be liable for their acts, omissions, conduct, or relationships in accordance with all laws relating thereto.

(2) The commission herein established is a legal entity separate and distinct from the party states and shall be so liable for its actions. Liabilities of the commission shall not be deemed liabilities of the party states. Members of the commission shall not be personally liable for actions taken by them in their official capacity.

(1) Any person or party state aggrieved by a final decision of the commission may obtain judicial review of such decisions in the United States District Court in the district wherein the commission maintains its headquarters by filing in such court a petition for review within sixty (60) days after the commission's final decision. Proceedings thereafter shall be in accordance with the rules of procedure applicable in such court.

(m) The commission shall:

(1) Receive and approve the application of a nonparty state to become a party state in accordance with Article VII;

(2) Submit an annual report to, and otherwise communicate with, the governors and the presiding officers of the legislative bodies of the party states regarding the activities of the commission;

(3) Hear and negotiate disputes which may arise between the party states regarding this compact;

(4) Require of and obtain from the party states, and nonparty states seeking to become party states, data and information necessary to the implementation of commission and party states' responsibilities;

(5) Approve the development and operation of regional facilities in accordance with Article V;

(6) Notwithstanding any other provision of this compact, have the authority to enter into agreements with any person for the importation of waste into the region and for the right of access to facilities outside the region for waste generated within the region. Such authorization to import or export waste requires the approval of the commission, including the affirmative vote of any host state which may be affected;

(7) Revoke the membership of a party state in accordance with Articles V and VII;

(8) Require all party states and other persons to perform their duties and obligations arising under this compact by an appropriate action in any form designated in Article IV (e); and

(9) Take such action as may be necessary to perform its duties and functions as provided in this compact.

(n) All files, records, and data of the commission shall be open to reasonable public inspection, regardless of physical form, subject to those exceptions listed within the host state public records law. The commission shall adopt bylaws relating to the availability of files, records, and data of the commission that are consistent in scope and principle with the public records law of the host state or, if there is no

host state, the public records law of the state in which the commission headquarters are located.

(o) All decisions of the commission regarding public meetings and public records issues shall be reviewable solely in a United States District Court of a host state or, if there is no host state, then in the state in which the compact commission headquarters are located.

ARTICLE V.

DEVELOPMENT AND OPERATION OF REGIONAL FACILITIES

(a) Following the collection of sufficient data and information from the states, the commission shall allow each party state the opportunity to volunteer as a host for a regional facility.

(b) If no state volunteers or if no proposal identified by a volunteer state is deemed acceptable by the commission, based on the criteria in Section (c) of this Article, then the commission shall publicly seek applicants for the development and operation of regional facilities.

(c) The commission shall review and consider each applicant's proposal based upon the following criteria:

(1) The capability of the applicant to obtain a license from the applicable authority;

(2) The economic efficiency of each proposed regional facility, including the total estimated disposal and treatment costs per cubic foot of waste;

(3) Financial assurances;

(4) Accessibility to all party states; and

(5) Such other criteria as shall be determined by the commission to be necessary for the selection of the best proposal, based on the health, safety, and welfare of the citizens in the region and the party states.

(d) The commission shall make a preliminary selection of the proposal or proposals considered most likely to meet the criteria enumerated in Section (c) and the needs of the region.

(e) Following notification of each party state of the results of the preliminary selection process, the commission shall:

(1) Authorize any person whose proposal has been selected to pursue licensure of the regional facility or facilities in accordance with the proposal originally submitted to the commission or as modified with the approval of the commission; and

(2) Require the appropriate state or states or the U.S. Nuclear Regulatory Commission to process all applications for permits and licenses required for the development and operation of any regional facility or facilities within a reasonable period from the time that a completed application is submitted.

(f) The preliminary selection or selections made by the commission pursuant to this article shall become final and receive the commission's approval as a regional facility upon the issuance of a license by the licensing authority. If a proposed regional facility fails to become licensed, the commission shall make another selection pursuant to the procedures identified in this article.

(g) The commission may by a two-thirds ($\frac{2}{3}$) affirmative vote of its membership revoke the membership of any party state which, after notice and hearing shall be found to have arbitrarily or capriciously denied or delayed the issuance of a license or permit to any person authorized by the commission to apply for such license or permit. Revocation shall be in the same manner as provided for in Section (e) of Article VII.

ARTICLE VI.

OTHER LAWS AND REGULATIONS

(a) Nothing in this compact shall be construed to:

(1) Abrogate or limit the applicability of any act of Congress or diminish or otherwise impair the jurisdiction of any federal agency expressly conferred thereon by the Congress;

(2) Prevent the application of any law which is not otherwise inconsistent with this compact;

(3) Prohibit or otherwise restrict the management of waste on the site where it is generated if such is otherwise lawful;

(4) Affect any judicial or administrative proceeding pending on the effective date of this compact;

(5) Alter the relations between, and the respective internal responsibilities of, the government of a party state and its subdivisions; and

(6) Affect the generation or management of waste generated by the federal government or federal research and development activities.

(b) No party state shall pass or enforce any law or regulation which is inconsistent with this compact.

(c) All laws and regulations or parts thereof of any party state which are inconsistent with this compact are hereby declared null and void for purposes of this compact. Any legal right, obligation, violation, or penalty arising under such laws or regulations prior to enactment of this compact shall not be affected.

(d) No law or regulation of a party state or of any subdivision or instrumentality thereof may be applied so as to restrict or make more costly or inconvenient access to any regional facility by the generators of another party state than for the generators of the state where the facility is situated.

ARTICLE VII.

ELIGIBLE PARTIES, WITHDRAWAL, REVOCATION, ENTRY INTO FORCE, TERMINATION

(a) This compact shall have as initially eligible parties the states of Arkansas, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, North Dakota, and Oklahoma. Such initial eligibility shall terminate on January 1, 1984.

(b) Any state may petition the commission for eligibility. A petitioning state shall become eligible for membership in the compact upon the unanimous approval of the commission.

(c) An eligible state shall become a member of the compact and shall be bound by it after such state has enacted the compact into law. In no event shall the compact take effect in any state until it has been entered into force as provided for in Section (f) of this article.

(d) Any party state may withdraw from this compact by enacting a statute repealing the same. Unless permitted earlier by unanimous approval of the commission, such withdrawal shall take effect five (5) years after the governor of the withdrawing state has given notice in writing of such withdrawal to each governor of the party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(e) Any party state which fails to comply with the terms of this compact or fulfill its obligations hereunder may, after notice and hearing, have its privileges suspended or its membership in the compact revoked by the commission. Revocation shall take effect one (1) year from the date such party state receives written notice from the commission of its action. The commission may require such party state to pay to the commission, for a period not to exceed five (5) years from the date of notice of revocation, an amount determined by the commission based on the anticipated fees which the generators of such party state would have paid to each regional facility and an amount equal to that which such party state would have contributed in accordance with Section (d) of Article III, in the event of insufficient revenues. The commission shall use such funds to ensure the continued availability of safe and economical waste management facilities for all remaining party states. Such state shall also pay an amount equal to that which such party state had contributed to the annual budget of the commission if such party state would have remained a member of the compact. All legal rights established under this compact of any party state which has its membership revoked shall cease upon the effective date of revocation; however, any legal obligations of such party state arising prior to the effective date of revocation shall not cease until they have been fulfilled. Written notice of revocation of any state's membership in the compact shall be transmitted immediately following the vote of the commission, by the chairman, to the governor of the affected party state, all other governors of the party states, and the Congress of the United States.

(f) This compact shall become effective after enactment by at least three (3) eligible states and after consent has been given to it by the Congress. The Congress shall have the opportunity to withdraw such consent every five (5) years. Failure of the Congress to withdraw its consent affirmatively shall have the effect of renewing consent for an additional five (5) year period. The consent given to this compact by the Congress shall extend to any future admittance of new party states under Sections (b) and (c) of this article and to the power to ban the exportation of waste pursuant to Article III.

(g) The withdrawal of a party state from this compact under Section (d) of this article or the revocation of a state's membership in this

compact under Section (e) of this article shall not affect the applicability of this compact to the remaining party states.

(h) This compact shall be terminated when all party states have withdrawn pursuant to Section (d) of this article.

ARTICLE VIII.

PENALTIES

(a) Each party state, consistent with its own law, shall prescribe and enforce penalties against any person for violation of any provision of this compact.

(b) Each party state acknowledges that the receipt by a regional facility of waste packaged or transported in violation of applicable laws and regulations can result in sanctions which may include suspension or revocation of the violator's right of access to the regional facility.

ARTICLE IX.

SEVERABILITY AND CONSTRUCTION

The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared by a court of competent jurisdiction to be contrary to the Constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. The provision of this compact shall be liberally construed to give effect to the purpose thereof.

History. Acts 1983, No. 9, § 1; A.S.A. 1947, § 82-4401; Acts 1991, No. 847, § 1.

A.C.R.C. Notes. Acts 1991, No. 847, § 2, provided: "The Central Interstate Low-Level Radioactive Waste Compact, as amended in Section 1 hereof, is hereby ratified and entered into by the state of Arkansas with any and all other states legally joining therein in accordance with its terms. Any state which does not adopt the amendments made herein to the Central Interstate Low-Level Radioactive

Waste Compact may be denied access to a regional facility by the host state."

U.S. Code. The Low-Level Radioactive Waste Policy Act referred to in this section was codified as 42 U.S.C. §§ 2021b note, 2021b — 2021d. The present Low-Level Radioactive Waste Policy Act is codified as 42 U.S.C. §§ 2021b — 2021j.

Section 11 e.2 of the Atomic Energy Act of 1954, as amended through 1978, referred to in this section probably refers to 42 U.S.C. § 2014(e).

8-8-203. State member and alternate on commission.

Arkansas shall have one (1) member and one (1) alternate member of the Central Interstate Low-Level Radioactive Waste Compact Commission. The member and alternate member shall be appointed by the

Governor after receiving the advice of the Joint Committee on Energy. Such appointments shall be for terms of two (2) years.

History. Acts 1983, No. 9, § 2; 1985, No. 929, § 1; A.S.A. 1947, § 82-4402.

8-8-204. [Repealed.]

A.C.R.C. Notes. Acts 2001, No. 783, § 1, provided: “The following are hereby abolished: (1) The Advisory Committee on Accountability; (2) The Crowley’s Ridge Trail Commission; (3) The Advisory Council to the Arkansas Natural Heritage Commission of the Department of Arkansas Heritage; (4) The Advisory Board for Director of the Arkansas High Technology Training Center; (5) The Low-Level Radioactive Waste Advisory Group; (6) The Ar-

kansas Medal of Honor Commission; (7) The Quality Management Board; and (8) The Arkansas Task Force on Timber Land Assessment.”

Publisher’s Notes. This section, concerning an advisory group, was repealed by Acts 2001, No. 783, § 2. The section was derived from Acts 1983, No. 9, § 2; 1985, No. 929, § 1; A.S.A. 1947, § 82-4402; Acts 1999, No. 1164, § 109.

8-8-205. Cooperation with commission.

The departments, agencies, and officers of the state and its subdivisions may cooperate with the Central Interstate Low-Level Radioactive Waste Compact Commission in the furtherance of any of its activities pursuant to the Central Interstate Low-Level Radioactive Waste Compact.

History. Acts 1983, No. 9, § 4; A.S.A. 1947, § 82-4404.

8-8-206. Approval of rates at regional facility.

(a) Pursuant to Article III of the Central Interstate Low-Level Radioactive Waste Compact, the State Radiation Control Agency is authorized to approve rates to be charged any user of a regional facility located in the State of Arkansas by the operator of the regional facility.

(b) No operator of a regional facility shall charge or alter such rates without the prior approval of the agency.

History. Acts 1983, No. 9, § 3; A.S.A. 1947, § 82-4403.

Cross References. State Radiation Control Agency, § 20-21-206.

CHAPTER 9 RECYCLING

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. RECYCLING GENERALLY.
3. RECYCLABLE ITEMS.
4. USED TIRE RECYCLING AND ACCOUNTABILITY ACT.
5. ARKANSAS NEWSPAPER RECYCLING ADVISORY COMMITTEE.
6. MERCURY SWITCH REMOVAL ACT OF 2005.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 8-9-101. Policy.
- 8-9-102. Construction.
- 8-9-103. Conflict with federal laws.

SECTION.

- 8-9-104. Definitions.
- 8-9-105. Penalties and procedures.

8-9-101. Policy.

It is the policy of the State of Arkansas to encourage and promote recycling in order to conserve natural resources, conserve energy, and preserve landfill space. In furtherance of this policy, the State of Arkansas adopts as a goal in the new century the recycling of forty percent (40%) of its municipal solid waste by 2005 and forty-five percent (45%) of its municipal solid waste by 2010, as shall be determined by the Arkansas Department of Environmental Quality by regulation.

History. Acts 1991, No. 749, § 1; 2001, No. 94, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Assembly, Environmental Law, 24 U. Ark. Legislation, 2001 Arkansas General Assembly, Little Rock L. Rev. 475.

8-9-102. Construction.

The terms and provisions of this chapter are to be liberally construed so as to best achieve and effectuate the policies and purposes hereof.

History. Acts 1991, No. 749, § 1.

8-9-103. Conflict with federal laws.

If any provision of this chapter is found to conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this chapter.

History. Acts 1991, No. 749, § 1.

8-9-104. Definitions.

As used in this chapter:

(1) “Commission” means the Arkansas Pollution Control and Ecology Commission;

(2) “Department” means the Arkansas Department of Environmental Quality;

(3) “Materials in the recycling process” means ferrous and nonferrous metals diverted or removed from the solid waste stream so that they may be reused, as long as:

(A) Those materials are processed or handled using reasonably available processing equipment and control technology, as determined by the Director of the Arkansas Department of Environmental Quality, taking cost into account; and

(B) A substantial amount of the materials are consistently utilized to manufacture a product which otherwise would have been produced using virgin material;

(4) “Municipal solid waste” means waste produced by individuals, public entities, agriculture, and businesses, including yard waste and waste not traditionally included in the recycling rate calculation and that is by its nature eligible for disposal in a municipal solid waste landfill;

(5) “Recyclable materials” or “recyclables” means those materials from the solid waste stream that can be recovered for reuse in present or reprocessed form;

(6) “Recyclable materials collection center” or “collection center” means a facility which receives or stores recyclable materials prior to timely transportation to material recovery facilities, markets for recycling, or disposal;

(7) “Recycling” means the systematic collection, sorting, decontaminating, and returning of waste materials to commerce as commodities for use or exchange;

(8) “Solid waste” means the same as provided by § 8-6-702;

(9) “Solid waste board” or “board” means a regional solid waste management board or its successor created under § 8-6-701 et seq.;

(10) “Solid waste district” or “district” means a regional solid waste management district or its successor created under § 8-6-701 et seq.;

(11) “Source separation” means the act or process of removing a particular type of recyclable material from the solid waste stream at the point of generation or at a point under control of the generator for the purpose of collection and recycling; and

(12) “Yard waste” means grass clippings, leaves, and shrubbery trimmings.

History. Acts 1991, No. 749, § 1; 1993, No. 479, § 2; 1999, No. 1164, § 110; 2001, No. 94, § 2; 2017, No. 1067, § 3.

Amendments. The 2017 amendment repealed former (b).

8-9-105. Penalties and procedures.

(a) Any person who violates any provision of § 8-9-301 et seq. or the Used Tire Recycling and Accountability Act, § 8-9-401 et seq., or of any rule, regulation, or order issued pursuant to this chapter, shall be subject to the same penalty and enforcement provisions as are contained in § 8-6-204.

(b) Except as otherwise provided in this chapter, the procedure of the Arkansas Pollution Control and Ecology Commission for issuance of rules and regulations, conduct of hearings, notice, power of subpoena, review of action on permits, right of appeal, presumptions, finality of actions, and related matters shall be as provided in §§ 8-4-101 — 8-4-106 and 8-4-201 — 8-4-229 of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., including without limitation §§ 8-4-205, 8-4-210, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229.

(c) All rules and regulations adopted under this chapter shall be reviewed by the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor.

History. Acts 1991, No. 749, § 1; 1997, No. 179, § 6.

SUBCHAPTER 2 — RECYCLING GENERALLY

SECTION.

8-9-201. [Repealed.]

8-9-202. Powers and duties of the department.

8-9-203. Recycling by governmental entities.

SECTION.

8-9-204. Purchasing of recyclables by governmental entities.

Cross References. Compliance Advisory Panel, § 8-4-314.

8-9-201. [Repealed.]

Publisher’s Notes. This section, concerning the State Marketing Board for Recyclables, was repealed by Acts 2017, No. 1067, § 4. The section was derived from Acts 1991, No. 749, § 1; 1997, No. 250, § 50; 1997, No. 540, § 12; 1997, No. 1018, § 2; 1997, No. 1354, § 10; 1999, No. 1164, § 111; 1999, No. 1508, §§ 3, 7.

8-9-202. Powers and duties of the department.

The Arkansas Department of Environmental Quality shall have the power and duty to:

(1) Adopt reasonable rules and regulations to effectuate the purposes of this subchapter;

(2) Promote public education and public awareness of the necessity of supporting waste reduction and recyclable material recovery as an integral part of all solid waste and recyclable materials programs in the state; and

(3) Provide, to the extent practicable, upon request, to state agencies, planning and technical assistance in carrying out their responsibilities under this subchapter.

History. Acts 1991, No. 749, § 1.

8-9-203. Recycling by governmental entities.

(a) Each state agency, state college or university, county, city, and public school, in cooperation with the Arkansas Department of Environmental Quality and the Compliance Advisory Panel shall:

(1) Establish a source separation and recycling program for recyclables generated as a result of agency operations;

(2) Adopt procedures for collection and storage of recyclables; and

(3) Make contractual or other arrangements for transportation and sale of recyclables.

(b) Nothing in this section shall prohibit any state agency, state college or university, county, city, or public school from engaging in, contracting for, or otherwise allowing or arranging for composting of yard waste on property owned or controlled by the governmental entity.

History. Acts 1991, No. 749, § 1; 2017, No. 1067, § 5.

Amendments. The 2017 amendment, in the introductory language of (a), substi-

tuted "Each" for "Beginning December 31, 1991, each" and "Compliance Advisory Panel" for "State Marketing Board for Recyclables".

8-9-204. Purchasing of recyclables by governmental entities.

State agencies, cities, counties, and other governmental entities are encouraged to provide for preferential purchasing of products made from recycled materials or products that may be recycled or reused.

History. Acts 1991, No. 749, § 1.

SUBCHAPTER 3 — RECYCLABLE ITEMS

SECTION.

8-9-301. Definitions.

8-9-302. Plastic container labeling.

SECTION.

8-9-303. Lead-acid batteries.

8-9-304. Used motor oil.

8-9-301. Definitions.

As used in this subchapter:

(1) "Label" means a molded, imprinted, or raised symbol on or near the bottom of a plastic product;

(2) "Lead-acid battery" means a battery with a core of elemental lead and a capacity of six volts (6v) or more;

(3) "Plastic" means any material made of polymeric organic compounds and additives that can be shaped by flow;

(4) "Plastic bottle" means a plastic container intended for single use that has a neck that is smaller than the body of the container, accepts a screw-type or snap cap, or other closure and has a capacity of sixteen fluid ounces (16 fl. ozs.) or more but less than five gallons (5 gals.);

(5) "Rigid plastic container" means any formed or molded container other than a bottle, intended for single use, composed predominantly of plastic resin, and having a relatively inflexible finite shape or form with a capacity of eight ounces (8 ozs.) or more but less than five gallons (5 gals.); and

(6) "Single use" means filled one (1) time.

History. Acts 1991, No. 749, § 1; 1993, No. 579, § 1.

8-9-302. Plastic container labeling.

(a)(1) Beginning July 1, 1992, a person shall not distribute, sell, or offer for sale in this state a plastic bottle or rigid plastic container unless the product is labeled with a code indicating the plastic resin used to produce the plastic bottle or rigid plastic container. Rigid plastic bottles or rigid plastic containers with labels and basecaps of a different material shall be coded by their basic material.

(2) The code shall consist of a number placed within a triangle of arrows and letters placed below the triangle of arrows. The triangle shall be equilateral, formed by three (3) arrows, with the apex of each point of the triangle at the midpoint of each arrow rounded with a short radius. The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the three (3) arrows curved at their midpoints, shall depict a clockwise path around the code number.

(3) The numbers and letters used shall be as follows:

- (A) PETE (polyethylene terephthalate);
- (B) HDPE (high density polyethylene);
- (C) V (vinyl);
- (D) LDPE (low density polyethylene);
- (E) PP (polypropylene);
- (F) PS (polystyrene); and
- (G) OTHER.

(b) The Arkansas Department of Environmental Quality shall maintain a list of the label codes provided pursuant to this section and shall provide a copy of that list to any person upon request.

History. Acts 1991, No. 749, § 1.

8-9-303. Lead-acid batteries.

(a) A person selling lead-acid batteries at retail or offering lead-acid batteries for retail sale in the state shall:

(1) Accept, at the point of transfer, in a quantity at least equal to the number of new lead-acid batteries purchased, used lead-acid batteries from customers, if offered by customers; and

(2) Post written notices which must be at least eight and one-half inches by eleven inches (8½" x 11") in size and must contain the universal recycling symbol and the following language:

(A) "It is illegal to discard a motor vehicle or marine battery.";

(B) "Recycle your used batteries.";

(C) "State law requires us to accept used lead-acid batteries for recycling, in exchange for new lead-acid batteries purchased."; and

(D) "When you purchase any new lead-acid battery, you will be charged an additional ten dollars (\$10.00) unless you return a used lead-acid battery for refund within thirty (30) days."

(b)(1) Each person who purchases a lead-acid battery at retail shall be assessed a surcharge of ten dollars (\$10.00) per lead-acid battery by the retailer unless for each lead-acid battery purchased:

(A) That person returns a used lead-acid battery to the retailer within thirty (30) days of the date of his or her surcharged purchase;

(B) That person provides a valid police report which indicates that a lead-acid battery has been stolen from that person; or

(C) The purchase is for installation in an item which was sold without a lead-acid battery and there is no used lead-acid battery for that item which could be returned, and that person signs a written statement containing the following language:

"I attest that this purchase of a lead-acid battery is for installation in an item which was sold without a lead-acid battery, and there is no used battery for this item which can be returned."

(2) A retailer shall refund the ten-dollar surcharge to any purchaser of a new lead-acid battery who presents a used lead-acid battery to the retailer with a receipt for the purchase of a new lead-acid battery from that retailer within that thirty-day period.

(3) A retailer may keep any lead-acid battery surcharge moneys which are not properly claimed within thirty (30) days after the date of sale.

(c) The Arkansas Department of Environmental Quality shall produce, print, and distribute the notices required by this section to all places where lead-acid batteries are offered for sale at retail.

(d) In performing its duties under this section, the department may inspect any place, building, or premises governed by this section.

(e)(1) Any person selling new lead-acid batteries at wholesale shall accept, at the point of transfer, in a quantity at least equal to the number of new lead-acid batteries purchased, used lead-acid batteries from customers if offered by customers.

(2) A person accepting lead-acid batteries in transfer from a lead-acid battery retailer shall be allowed a period not to exceed ninety (90) days to remove lead-acid batteries from the retail point of collection.

(f) No person shall place a used lead-acid battery in municipal solid waste or discard or otherwise dispose of a lead-acid battery, except by delivery to:

(1) A lead-acid battery retailer or wholesaler;

(2) A collection or recycling facility authorized under the law of the State of Arkansas; or

(3) A secondary lead smelter permitted by the United States Environmental Protection Agency.

(g) No lead-acid battery retailer shall dispose of a used lead-acid battery except by delivery to the agent of a lead-acid battery wholesaler, to a battery manufacturer for delivery to a secondary lead smelter permitted by the United States Environmental Protection Agency, or to a collection or recycling facility authorized under the law of the State of Arkansas or to a secondary lead smelter permitted by the United States Environmental Protection Agency.

(h) An owner or operator of a solid waste landfill shall not knowingly accept for disposal a lead-acid battery.

(i) Each lead-acid battery improperly disposed of or accepted for disposal shall constitute a separate violation.

(j) The requirements for retailers contained in subsections (a) and (b) of this section shall not apply to a person whose retail sales of lead-acid batteries are not in the ordinary course of business.

(k) Nothing in this section shall be construed to prohibit the collection, transportation, or disposal of lead-acid batteries mixed or commingled with solid waste by any person engaged in the collection, transportation, or disposal of solid waste, unless it can be demonstrated that the person knew or should have known that such lead-acid batteries had been mixed or commingled with the solid waste collected, transported, or disposed of, and unless it can be demonstrated that it is economically and environmentally feasible to remove and recover the lead-acid batteries from the solid waste collected, transported, or disposed of.

History. Acts 1991, No. 749, § 1; 1993, No. 579, § 2.

Publisher's Notes. Acts 1991, No. 749,

§ 1 provided: "The provisions of this section shall apply beginning July 1, 1992."

8-9-304. Used motor oil.

No later than December 31, 1992, the Arkansas Pollution Control and Ecology Commission shall adopt, after notice and public hearing, reasonable regulations which are protective of the public health and environment for the collection, storage, and disposal, reuse, or recycling of used motor oil.

History. Acts 1991, No. 749, § 1.

SUBCHAPTER 4 — USED TIRE RECYCLING AND ACCOUNTABILITY ACT

SECTION.

- 8-9-401. Title — Legislative intent — Findings.
- 8-9-402. Definitions.
- 8-9-403. Operation of waste tire sites — Requirements and prohibited activities.
- 8-9-404. Rim removal fees — Import fees — Commercial generator fees — Definitions.
- 8-9-405. Used tire program reimbursements.
- 8-9-406. [Repealed.]
- 8-9-407. Electronic uniform used tire manifest system.
- 8-9-408. Accountability requirements for

SECTION.

- used tire programs — Business plans.
- 8-9-409. Performance and efficiency evaluations.
- 8-9-410. Incentives to consolidate used tire programs.
- 8-9-411. Tire transporters — Licenses.
- 8-9-412. Additional fees.
- 8-9-413. Applicability.
- 8-9-414. Powers and duties of the Arkansas Pollution Control and Ecology Commission.
- 8-9-415. Permitting, licensing, inspections, procedures, enforcement, and penalties.

Effective Dates. Acts 1993, No. 518, § 6: Mar. 16, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that all solid waste districts do not have waste tire collection centers and waste tire processing facilities; that some waste tires must be transported across district lines for recycling and processing; that whole waste tires must be processed prior to transportation across district lines; that it is an undue hardship on those persons transporting whole waste tires to process them prior to delivery at a permitted processing facility; and that this act allows transportation of whole waste tires across district lines to a permitted processing facility. Therefore an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1254, § 9: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of this act are of critical importance to the state's ability to provide efficient and effective programs in the protection of the state's environment as mandated through the activities of the Department of Pollution Control and Ecology. Therefore, an emergency is

hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1999, No. 775, § 5: Mar. 22, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the law concerning the waste tire grant program is inadequate for the protection of the public. Regional Solid Waste Management Districts are dependent on adequate grant funding, which this bill would provide. Without adequate funding, the Districts' efforts to manage waste tires, which can result in a blight on the countryside and hazardous and unhealthy conditions, would be hindered. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

8-9-401. Title — Legislative intent — Findings.

(a) This subchapter shall be known and may be cited as the “Used Tire Recycling and Accountability Act”.

(b) The purpose of this subchapter is to:

(1) Protect the public health and the state’s environmental quality by setting and implementing standards to be followed in the hauling, collection, storage, and recycling or disposal of recyclable tires, waste tires, and used tires culled for resale;

(2) Provide accountability and sustainability for used tire programs by requiring use of the electronic uniform used tire manifest system developed by the Arkansas Department of Environmental Quality and business plans for used tire programs;

(3) Equalize the application of fees for all tires removed from rims; and

(4) Ensure that reimbursements for used tire programs are related to the overall used tire program goals.

(c) The General Assembly finds that:

(1) If not properly managed, used tires pose a potential threat to human health and safety and the environment because used tires:

(A) Are a known breeding habitat for mosquitoes and other disease-transmitting vectors; and

(B) Pose substantial fire hazards;

(2) The state must have a used tire program for recyclable tires, waste tires, and used tires culled for resale that is accountable, effective, and efficient; and

(3) The primary goal of the used tire program is to recycle or put to beneficial use as many used tires as possible.

History. Acts 1991, No. 749, § 1; 2017, No. 317, § 1.

Amendments. The 2017 amendment substituted “Title — Legislative intent — Findings” for “Legislative intent” in the section heading; added (a); designated the existing language as the introductory lan-

guage of (b) and (b)(1); in (b)(1), substituted “collection, storage, and recycling or” for “storage, recycling, and”, inserted “recyclable tires”, and added “and used tires culled for resale”; added (b)(2) through (b)(4); and added (c).

8-9-402. Definitions.

As used in this subchapter:

(1) “Beneficial use” means using a tire or part of a tire:

(A) To make another product;

(B) To make a component material of another product;

(C) As a substitute for a commercial product or material; or

(D) As a component to produce an alternative fuel for commercial purposes;

(2)(A) “Commercial generator” means a person who sells new tires or provides delivery of new tires as part of fleet services to any one (1) or more of the following:

(i) A municipality;

- (ii) A county;
- (iii) A state agency;
- (iv) A federal agency;
- (v) A school district;
- (vi) A political subdivision of the state; or
- (vii) A person who in the ordinary course of business buys tires in bulk for use on commercial vehicles.

(B) "Commercial generator" does not include a tire retailer;

(3) "Electronic uniform used tire manifest system" means an administrative method developed by the Arkansas Department of Environmental Quality that:

(A) Uses an electronic application for the submission and management of information related to the generation, collection, transportation, distribution, and recycling, disposal, or resale of each recyclable tire, waste tire, and used tire culled for resale regulated under this subchapter; and

(B) Records the origin, date of collection, date of transfer, quantity, type, transporter, and destination for each recyclable tire, waste tire, and used tire culled for resale regulated under this subchapter;

(4)(A) "Extra-large tire" means a tire that due to its size or construction is more difficult to process for recycling or disposal than a large tire and costs substantially more to process than a large tire.

(B) "Extra-large tire" includes without limitation tires used, capable of being used, or designed to be used on any of the following vehicles or equipment:

- (i) A skid steer loader;
- (ii) Excavation equipment;
- (iii) A farm implement, including without limitation a tractor;
- (iv) A backhoe;
- (v) A road grader;
- (vi) Industrial equipment;
- (vii) A skidder; or
- (viii) A heavy duty truck used off-road for mining;

(5) "Inter-district used tire program" means a program formed by agreement of two (2) or more regional solid waste management boards to pool resources of all regional solid waste management boards that are parties to the agreement for the administration of one (1) consolidated used tire program;

(6) "Large tire" means a tire with a rim size greater than nineteen inches (19") and a load rating of "F" or higher, including without limitation a wide-base or extra-wide single tire;

(7) "Load rating" means the system of trade designations that identifies the weight-carrying capacity range of a tire;

(8) "Person" means an individual, government entity, or any other entity that is recognized by law with rights and duties;

(9) "Qualified entity" means an entity that demonstrates to the department that the entity has the capability, experience, and resources to operate and administer a used tire program in compliance with this subchapter;

(10) “Recyclable tire” means a worn, damaged, or defective tire that is recycled because it is no longer repairable, reusable, or suitable for its original intended purpose;

(11) “Recycle” means the systematic process of collecting, sorting, decontaminating, and returning waste materials to commerce as commodities for use, other beneficial use, or exchange;

(12)(A) “Small tire” means a tire that has a load rating of “F” or lower and a rim size of nineteen inches (19”) or smaller.

(B) “Small tire” includes a tire from any of the following vehicles:

- (i) An automobile;
- (ii) A motorcycle; or
- (iii) An all-terrain vehicle;

(13)(A) “Tire” means any one (1) or more of the following:

(i) A continuous, ring-shaped, removable cover made of solid rubber, pneumatic rubber, or semipneumatic rubber that is installed around a wheel rim; or

(ii) Any other round piece of equipment that is attached or could be attached to a vehicle or aircraft and has a primary function of enabling surface mobility.

(B) “Tire” does not include a solid wheel rim with an integral rubber covering or a tire used on a nonmotorized bicycle, golf cart, or lawn mower;

(14) “Tire collection center” means a site where tires are collected from tire generators, tire transporters, or the public before being recycled or disposed of by a used tire program;

(15)(A) “Tire generator” means a person who:

- (i) Removes tires from rims for disposal or resale; or
- (ii) Stores used tires on or in property owned, leased, or otherwise controlled by that person.

(B) “Tire generator” includes without limitation:

- (i) A tire retailer;
- (ii) A tire wholesaler;
- (iii) A tire transporter;
- (iv) A tire manufacturer;
- (v) A manufacturer of retreaded tires;
- (vi) A new car dealer;
- (vii) A used car dealer;
- (viii) An auto repair shop; or
- (ix) A salvage yard.

(C) “Tire generator” does not include a commercial generator;

(16) “Tire manufacturer” means a manufacturing operation engaged in the final assembly of the basic components of a tire;

(17) “Tire processing facility” means a site where equipment is used to cut, chip, grind, or otherwise alter used tires;

(18)(A) “Tire retailer” means any one (1) or more of the following:

- (i) A person who is in the business of selling new tires, used tires, or both new tires and used tires to the end consumer; or
- (ii) A person who is in the business of or receives compensation for removing tires from rims.

(B) "Tire retailer" does not include a person who sells tires to another person exclusively for the purpose of resale if the subsequent retail sale is subject to the fee imposed under § 8-9-404 or a commercial generator;

(19) "Tire transporter" means a person who is in the business of or receives compensation for transferring used tires from one (1) location to another location for collection, storage, processing, recycling, disposal, reuse, or resale;

(20)(A) "Used tire" means a tire that meets one (1) or more of the following criteria:

- (i) Is repairable or retreadable for its original intended purpose;
- (ii) Is reusable;
- (iii) Is recyclable; or
- (iv) Has been collected by a tire retailer or at a tire collection center operated under this subchapter.

(B) "Used tire" includes without limitation a recyclable tire, waste tire, and used tire culled for resale.

(C) "Used tire" does not include a tire being held for ninety (90) days or less for the purpose of retreading or repairing the tire;

(21) "Used tire culled for resale" means a tire that is removed from the rim but is diverted from a tire collection center, tire processing facility, or tire transporter with the intention of selling for reuse;

(22) "Used tire program" means a program that receives funding under this subchapter and is operated by:

- (A) A regional solid waste management board; or
- (B) An inter-district used tire program;

(23) "Vehicle" means any piece of equipment that uses wheels for surface mobility;

(24) "Waste tire" means a worn, damaged, or defective tire that is land disposed because it is no longer repairable, reusable, or suitable for its original intended purpose;

(25)(A) "Waste tire site" means a location where unpermitted used tires are accumulated, whether loosely stored, compacted and baled, or a combination of both loosely stored and compacted and baled.

(B) "Waste tire site" does not include:

- (i) A location where only new tires are stored; or
- (ii) A location that is authorized to store tires by the department or regulations promulgated by the Arkansas Pollution Control and Ecology Commission;

(26) "Waste tires originating from a tire manufacturer" means those new tires that originate from a tire assembly process and are determined by the tire manufacturer to be either defective or unfit for use on a vehicle; and

(27) "Wide-base tire" or "extra-wide single tire" means a tire approximately four hundred fifty-five millimeters (455 mm) wide that is used on a vehicle in which the front axle load exceeds the load capacity of a truck tire.

History. Acts 1991, No. 749, § 1; 1993, No. 518, § 1; 1995, No. 1315, § 1; 1997, No. 1292, § 1; 1999, No. 1164, § 112; 2003, No. 1304, § 1; 2011, No. 744, § 1; 2015, No. 840, § 1; 2017, No. 317, § 1.

Amendments. The 2015 amendment redesignated former (10) as (10)(A); and added (10)(B).

The 2017 amendment rewrote the section.

8-9-403. Operation of waste tire sites — Requirements and prohibited activities.

(a)(1) The owner or operator of any waste tire site shall provide the Arkansas Department of Environmental Quality and the applicable regional solid waste management district with:

(A) Information concerning the waste tire site's location and size and the approximate number of tires that are accumulated at the waste tire site; and

(B) A written plan specifying a method and time schedule, subject to approval by the department, for the removal, disposal, or recycling of the tires.

(2) The owner or operator shall implement a written plan approved by the department according to the written plan's schedule.

(b) A person shall not cause or permit the open burning of tires in the state.

(c)(1) A person shall not maintain a waste tire site.

(2) It is illegal for any person to dispose of tires or portions of tires in the state unless the tires or portions of tires are disposed of for processing or collected for processing at a permitted tire processing facility, a tire collection center, or a permitted solid waste disposal facility.

(3)(A) Unless otherwise provided by law or regulation, whole tires shall not be deposited into a landfill or a waste tire monofill as a method of final disposal unless shredded or split into sufficiently small parts to assure their proper disposal.

(B) Unless otherwise provided by law or regulation, only small tires that have been processed by cutting, shredding, or splitting into sufficiently small parts to assure proper disposal or small tires processed by baling may be disposed of at a disposal site that has a permit issued for a landfill designed and operated as a waste tire monofill.

(C) Suitable processed-tire materials may be used in the construction of daily and intermediate cover systems for all landfills if the use is:

(i) Authorized by the department;

(ii) Shown to not present a threat to human health and the environment; and

(iii) Shown to control disease, vectors, fires, odors, blowing litter, or scavenging.

(4) A person who leases, owns, or otherwise controls real property may use tires in compliance with procedures approved by and regulations promulgated by the Arkansas Pollution Control and Ecology Commission and procedures approved by each district:

(A) For soil erosion abatement and drainage purposes; or

(B) To secure covers over silage, hay, straw, or agricultural products.

(d) A tire processing facility permit or tire collection center permit, or both, is required for:

(1) A tire retreading business where tires are kept on any real property owned, leased, or otherwise controlled by the tire retreading business;

(2) A person that in the ordinary course of business removes tires from rims and the tires removed from rims are stored on any real property owned, leased, or otherwise controlled by the person; or

(3) A tire retailer that is serving as a tire collection center if recyclable tires, waste tires, or used tires culled for resale are kept on any real property owned, leased, or otherwise controlled by the tire retailer.

(e)(1) If disposed in the state, waste tires originating from a tire manufacturer shall be disposed of at a permitted tire collection center or a permitted tire processing facility for a fee to be established by the permitted tire collection center or permitted tire processing facility.

(2) Records of the disposition of the waste tires originating from a tire manufacturer shall be maintained by that tire manufacturer for a period of at least three (3) years and shall be available for review by the department.

History. Acts 1991, No. 749, § 1; 1993, No. 519, § 1; 1995, No. 1315, § 2; 1997, No. 1292, § 2; 2005, No. 961, § 1; 2005, No. 1951, § 1; 2011, No. 744, § 2; 2015, No. 840, § 2; 2017, No. 317, § 1.

A.C.R.C. Notes. As originally enacted by Acts 1991, No. 749, § 1, subsection (c) of this section began: “on or after July 1, 1992.”

Amendments. The 2015 amendment redesignated former (d)(2)(D) as (d)(2)(D)(i); and added (d)(2)(D)(ii).

The 2017 amendment deleted “Within six (6) months after July 15, 1991” at the

beginning of the introductory language of (a)(1); in (a)(1)(A), inserted “waste tire” and substituted “number of tires” for “number of waste tires”; in (a)(2), substituted “a written plan approved by the department” for “the approved plan” and “the written plan’s” for “its”; rewrote (c); deleted former (d); redesignated former (e) as (d); rewrote present (d); deleted former (f); redesignated former (g)(1) and (g)(2) as (e)(1) and (e)(2); rewrote present (e)(1); inserted “tire” preceding the second occurrence of “manufacturer” in present (e)(2); and deleted former (h).

8-9-404. Rim removal fees — Import fees — Commercial generator fees — Definitions.

(a)(1) Beginning on January 1, 2018, there shall be imposed a rim removal fee upon the transaction of removing a tire from a rim that is related to the sale of a replacement tire by a tire retailer.

(2) The rim removal fee shall be charged by the tire retailer to a person who:

(A) Purchases a replacement tire for a rim that necessitates the removal of a different tire from the same rim; or

(B) Purchases the service of removal of a tire from a rim and replacement with a tire that was not purchased from the tire retailer

if the person requesting the rim removal cannot show proof of payment of the rim removal fee under this section for the replacement tire.

(3)(A) The rim removal fee shall be imposed at the rate of three dollars (\$3.00) for each new tire that replaces a tire removed from a rim and one dollar (\$1.00) for each used tire that replaces the tire removed from the rim.

(B) Except for the rim removal fees imposed under this section, a tire retailer shall not charge any other fee to a person who purchases the service of removal of a tire from a rim.

(C) For any tires collected by a tire retailer, the tire retailer shall ensure that the tires are transported by a licensed tire transporter to a permitted tire collection center, a solid waste management facility, a tire processing facility, or another tire retailer.

(D) The tire retailer shall account for each tire removed from a rim using the electronic uniform used tire manifest system.

(E) Each tire retailer who was not registered with the Department of Finance and Administration on August 1, 2017, shall be registered with the Department of Finance and Administration on or before December 1, 2017, and shall comply with all requirements related to collecting and reporting rim removal fees.

(4) The rim removal fees imposed under this section shall be added to the total cost charged by the tire retailer to the purchaser after all applicable gross receipts or compensating use taxes on the tires have been computed and shall be separately stated on the invoice or bill of sale.

(5)(A) The rim removal fees imposed under this section shall be paid monthly to the Director of the Department of Finance and Administration.

(B) However, the tire retailer may retain five percent (5%) of the rim removal fee imposed under subdivision (a)(3)(A) of this section for administrative costs.

(6)(A) The rim removal fees remitted under subdivision (a)(5)(A) of this section shall be collected by the director and shall be subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(B)(i) Each tire retailer shall file a return with the director on or before the twentieth of each month.

(ii) The return shall show the total rim removal fees collected for each tire removed from the rim during the preceding calendar month.

(iii) The tire retailer shall remit the rim removal fees with the return.

(iv) The director shall prescribe the form and contents of the return.

(b)(1) The Department of Finance and Administration shall deposit the proceeds from rim removal fees collected under subsection (a) of this section into the State Treasury as special revenues to the credit of the following funds in the following percentages:

(A) Ninety-three percent (93%) to be deposited into the Used Tire Recycling Fund; and

(B) Seven percent (7%) to be deposited into the Arkansas Department of Environmental Quality Fee Trust Fund.

(2) As used in this section, "proceeds from rim removal fees" means all moneys collected and received by the Department of Finance and Administration under this section for rim removal fees imposed under subsection (a) of this section and interest and penalties on delinquent rim removal fees.

(c)(1)(A) Beginning on January 1, 2018, there is imposed an import fee of one dollar (\$1.00) on each used tire that is imported into Arkansas.

(B) A person who imports a used tire shall comply with the electronic uniform used tire manifest system.

(2) The import fee imposed under this subsection shall be paid by the person who imports the used tire to the Department of Finance and Administration in accordance with the Arkansas Tax Procedure Act, § 26-18-101 et seq., and any rules promulgated by the Department of Finance and Administration.

(3)(A) The Department of Finance and Administration shall deposit the proceeds from import fees imposed under this subsection into the State Treasury as special revenues to the credit of the following funds in the following percentages:

(i) Ninety-three percent (93%) to be deposited into the Used Tire Recycling Fund; and

(ii) Seven percent (7%) to be deposited into the Arkansas Department of Environmental Quality Fee Trust Fund.

(B) As used in this section, "proceeds from import fees" means all moneys collected and received by the Department of Finance and Administration under this subsection and interest and penalties on delinquent import fees.

(d)(1) Beginning on January 1, 2018, there shall be imposed a commercial generator fee upon the transaction of a commercial generator selling or delivering a new tire as part of fleet services.

(2) The commercial generator fee shall be charged by the commercial generator to a person who in the ordinary course of business is an end user that removes used tires from the rim and replaces them with a new tire.

(3)(A) The commercial generator fee shall be imposed at the rate of three dollars (\$3.00) for each new tire that is sold or delivered to an end user that removes used tires from the rim and replaces them with a new tire.

(B) Except for the commercial generator fees imposed under this section, the commercial generator shall not charge any other fee to the end user.

(C)(i) For any used tires collected by a commercial generator, the first transportation of the used tire from the end user to the commercial generator's facility does not require a licensed tire transporter.

(ii) Any subsequent transportation of the used tire by the commercial generator for recycling or disposal requires a licensed tire

transporter and shall be accounted for using the electronic uniform used tire manifest system.

(D) Each commercial generator who was not registered with the Department of Finance and Administration on August 1, 2017, shall be registered with the Department of Finance and Administration on or before December 1, 2017, and shall comply with all requirements related to collecting and reporting commercial generator fees.

(4) The commercial generator fees imposed under this section shall be added to the total cost charged by the commercial generator to the end user after all applicable gross receipts or compensating use taxes on the tires have been computed and shall be separately stated on the invoice or bill of sale.

(5)(A) The commercial generator fees imposed under this section shall be paid monthly to the director.

(B) However, the commercial generator may retain five percent (5%) of the commercial generator fee imposed under subdivision (d)(3)(A) of this section for administrative costs.

(6)(A) The commercial generator fees remitted in subdivision (d)(5)(A) of this section shall be collected by the director and shall be subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(B)(i)(a) Each commercial generator shall file a return with the director on or before the twentieth of each month.

(b) The return shall show the total commercial generator fees collected for each tire sold or delivered to the end user during the preceding calendar month.

(c) The commercial generator shall remit the commercial generator fees with the return.

(ii) The director shall prescribe the form and contents of the return.

(7) The Department of Finance and Administration shall deposit the proceeds from commercial generator fees collected under this subsection into the State Treasury as special revenues to the credit of the following funds in the following percentages:

(A) Ninety-three percent (93%) to be deposited into the Used Tire Recycling Fund; and

(B) Seven percent (7%) to be deposited into the Arkansas Department of Environmental Quality Fee Trust Fund.

(8) As used in this section, "proceeds from commercial generator fees" means all moneys collected and received by the Department of Finance and Administration under this section for commercial generator fees imposed under this subsection and interest and penalties on delinquent commercial generator fees.

(e)(1) It is the purpose and intent of this section that only one (1) of the following fees imposed under this section be charged for the transaction of removing a tire from a rim that is related to the sale of a replacement tire:

(A) The rim removal fee; or

(B) The commercial generator fee.

(2) If a person establishes that he or she has paid one (1) of the fees for a tire, the tire retailer or tire generator shall not charge an additional fee for that tire.

History. Acts 1991, No. 749, § 1; 1993, No. 1254, §§ 4, 5; 1995, No. 1315, § 3; 1997, No. 1292, § 3; 1999, No. 1164, §§ 113-115; 2003, No. 1304, §§ 2, 3; 2005, No. 1822, § 1; 2017, No. 317, § 1.

Amendments. The 2017 amendment substituted “Rim removal fees — Import fees — Commercial generator fees” for “Waste tire fees” in the section heading; and rewrote the section.

8-9-405. Used tire program reimbursements.

(a) By January 1, 2018, the Arkansas Department of Environmental Quality shall establish the Used Tire Recycling and Accountability Program to:

(1) Reimburse used tire programs for used tire recycling and disposal costs;

(2) Incentivize recycling used tires collected under this subchapter;

(3) Provide accountability for the disbursement of moneys to used tire programs; and

(4) Otherwise improve the sustainability of used tire programs.

(b) To be eligible for reimbursements under this subchapter, a used tire program shall:

(1) Be included in the solid waste management system under § 8-9-101 et seq. for each regional solid waste management district that the used tire program serves;

(2) Have a used tire management plan for each regional solid waste management district that the used tire program serves to include without limitation a schedule for identification and cleanup of waste tire sites that is updated until abatement of each identified waste tire site is completed;

(3) Be included in each regional solid waste management district’s recycling program under § 8-9-203 that the used tire program serves;

(4) If operated by a political subdivision of the state or other public entity:

(A) Use the financial management system under § 14-21-101 et seq.;

(B) Comply with the county purchasing procedures under § 14-22-101 et seq.;

(C) Comply with the Arkansas County Accounting Law of 1973, § 14-25-101 et seq.; and

(D) Comply with the Local Fiscal Management Responsibility Act, § 14-77-101 et seq.;

(5) Be operated in compliance with this subchapter and all other laws, regulations, and rules related to the administration of solid waste management systems and recycling programs in Arkansas;

(6) Encourage the voluntary establishment of tire collection centers at tire retailers, tire processing facilities, and solid waste disposal facilities for the deposit of tires generated in the state;

(7) Provide the department with business plan information required under § 8-9-408;

(8) Provide the department with all quarterly financial information and progress reports related to § 8-9-409;

(9)(A) Establish tire collection centers within each county served by the used tire program that accepts tires from tire retailers at no charge if the tire retailer establishes that it:

(i) Collects the rim removal fee imposed under § 8-9-404(a); and

(ii) Complies with the electronic uniform used tire manifest system under § 8-9-407.

(B) The tire collection centers under this subdivision (b)(9) may be at any one (1) or more of the following:

(i) A solid waste disposal facility;

(ii) A tire processing facility; or

(iii) A tire retailer; and

(10) Establish at least one (1) tire collection center within each county served by the used tire program.

(c) A used tire program that receives reimbursements under this section may:

(1) Contract with a tire processing facility that is approved by the Director of the Arkansas Department of Environmental Quality;

(2) Remove or contract for the removal of tires from waste tire sites within the regional solid waste management district;

(3) Provide incentives for establishing privately operated tire collection centers for the public; and

(4) Form an inter-district used tire program.

(d) Moneys disbursed from the Used Tire Recycling Fund by the department for reimbursements under this section shall be:

(1) Distributed as provided under this section only to the used tire programs that comply with all applicable requirements in this subchapter related to the operation of used tire programs;

(2) Based on moneys available in the fund, funding levels under subsection (e) of this section, the approved business plan rate, funding priorities under subsection (f) of this section, quarterly financial reports, and other documentation submitted by the used tire programs; and

(3) Made on a quarterly basis to the used tire programs.

(e)(1) The following funding levels for quarterly disbursements from the fund are established:

(A) Level One Funding shall be paid first each quarter from all available moneys collected and available for disbursement in that quarter;

(B) Level Two Funding shall be paid each quarter only if any moneys are available after all Level One Funding obligations are paid in full for that quarter; and

(C) Level Three Funding shall be paid each quarter only if any moneys are available after all Level One Funding and Level Two Funding obligations are paid in full for that quarter.

(2) If there are insufficient moneys available in a quarter to make reimbursements for all submitted requests under any funding level under subsection (f) of this section, the department shall calculate the total remaining funding available for the funding level and allocate the moneys available for reimbursement to each used tire program based on a pro rata share of each used tire program's reimbursement request compared to the total moneys available for that funding level.

(3)(A) The Arkansas Pollution Control and Ecology Commission may increase reimbursement rates if the director recommends an increase because of one (1) or more of the following:

(i) The relevant consumer price index for the preceding calendar year exceeded the consumer price index for calendar year 2018; or

(ii) The used tire programs have established an increase in operation costs.

(B) An increase to any reimbursement rate under subsection (f) of this section shall not exceed ten percent (10%) each calendar year.

(f) Based on data received from the electronic uniform used tire manifest system and quarterly reports, the following funding may be available from the fund for used tire programs that are in compliance with all applicable requirements of this subchapter:

(1) Level One Funding for reimbursement for disposing of used tires at the approved business plan rate;

(2) Level Two Funding to an eligible inter-district used tire program under § 8-9-410(b) for assistance with funding an illegal dumps control officer position; and

(3) Level Three Funding to an eligible used tire program that is in compliance with § 8-9-408 for equipment purchases, repairs, or maintenance that are scheduled or planned at least six (6) months before and included in the business plan or revised business plan of the used tire program.

(g) At the request of a used tire program that needs operational assistance or guidance on compliance with this subchapter, the department shall provide to the used tire program operational assistance or guidance on compliance with this subchapter.

(h) The department shall:

(1) Develop market opportunities for beneficial use of used tire material; and

(2) Educate the public on the Used Tire Recycling and Accountability Program.

History. Acts 1991, No. 749, § 1; 1995, No. 1315, § 4; 1997, No. 1292, § 4; 1999, No. 775, § 1; 2003, No. 1304, § 4; 2015, No. 840, § 3; 2017, No. 317, § 1.

Amendments. The 2015 amendment inserted designations (c)(3)(A) through (c)(3)(C); substituted "submitted" for "approved" in (c)(3)(A); deleted "and expenses expected on waste tire projects during the

next quarter and any other information as determined by the department" at the end of (c)(3)(B); and deleted "Accordingly, and upon department approval" at the beginning of (c)(3)(C).

The 2017 amendment substituted "Used tire program reimbursements" for "Waste tire grants" in the section heading; and rewrote the section.

8-9-406. [Repealed.]

Publisher's Notes. This section, concerning statewide disposal facilities for waste tires, was repealed by Acts 1995, No. 1315, § 7. The section was derived from Acts 1991, No. 749, § 1; 1993, No. 518, § 2.

8-9-407. Electronic uniform used tire manifest system.

(a) Beginning on January 1, 2018, the following entities shall use the electronic uniform used tire manifest system to accurately report all information related to the collection, transportation, distribution, and recycling or disposal of recyclable tires, waste tires, and used tires culled for resale:

- (1) Used tire programs;
 - (2) Tire generators;
 - (3) Tire collection centers;
 - (4) Any person who:
 - (A) Removes a tire from the used tire program after it is collected;
- or
- (B) Imports a tire under § 8-9-404(c); and
 - (5) Commercial generators.

(b) If any of the persons or entities listed in subsection (a) of this section cannot use the electronic uniform used tire manifest system, the person or entity may submit to the used tire program an equivalent paper version which shall be entered into the electronic uniform used tire manifest system.

History. Acts 2017, No. 317, § 1.

8-9-408. Accountability requirements for used tire programs — Business plans.

(a) On or before December 31, 2017, a used tire program that receives funding under this subchapter shall provide the Arkansas Department of Environmental Quality with a business plan that establishes its current operating plan and a proposed operating plan for calendar year 2018 and approved by its board.

(b) The minimum required information for the business plan is:

- (1) Current operation information to include:
 - (A) An explanation of debt and debt repayment obligations, including scheduled payments;
 - (B) A description of equipment used, including type, year manufactured, debt obligations related to the equipment, and whether it is leased or owned;
 - (C) An explanation of contract obligations including the amount, length, and scope of the contract;
 - (D) A description of how tires are managed, to include without limitation collection, transportation, and disposal or recycling;

(E) An explanation of costs, including the cost of tire collection centers, other collection facilities, trailers, transfer stations, processing, mileage, fuel, and personnel; and

(F) The number of tires currently on any property owned, leased, or otherwise controlled by each regional solid waste management district included in the used tire program; and

(2) Proposed operation costs for calendar year 2018, to include:

(A) A description of how tires will be managed, to include without limitation collection, storage, transportation, and disposal or recycling;

(B) Estimated cost of utilities, personnel, equipment, fees, leases, facilities, and any other costs related to the primary operation of the used tire program;

(C) The capital improvement and maintenance plan with estimated expenditures and costs;

(D) The estimated transportation cost including mileage, fuel, equipment, personnel, utilities, insurance, bonds, and fees;

(E) The locations of all tire collection centers; and

(F) The types of tires managed, to include recyclable tires, waste tires, and used tires culled for resale.

(c) A used tire program shall submit a revised business plan if there is a substantial change in the used tire program operations or if the department requests a revised business plan.

(d) A business plan or revised business plan submitted under this subchapter is effective after approval by the department or its designee.

(e)(1) The approved business plan or approved revised business plan shall include the approved business plan rates for each used tire program.

(2)(A) The department shall cooperate with the used tire programs and other entities to develop each used tire program's approved business plan rates for recyclable tires and waste tires.

(B) The approved business plan rates shall also use the size of a tire, including without limitation small tires, large tires, and extra-large tires, as a factor for determining the approved business plan rates.

History. Acts 2017, No. 317, § 1.

8-9-409. Performance and efficiency evaluations.

(a) The Arkansas Department of Environmental Quality shall develop a system to evaluate and report the performance and efficiency of used tire programs and the Used Tire Recycling and Accountability Program.

(b) The evaluation and reporting system shall use the following performance indicators for each used tire program:

(1) The number of:

(A) Recyclable tires;

(B) Waste tires disposed in a landfill; and

- (C) Waste tires disposed in a monofill;
- (2) The number of reported waste tire sites located in the regional solid waste management districts that are included in the used tire program;
- (3) Electronic uniform used tire manifest system compliance;
- (4) Administrative expenses;
- (5) Transportation expenses;
- (6) Building, warehouse, and other facilities expenses;
- (7) Revenue sources and the amount of revenue received from each source;
- (8) The number, location, and type of tire collection centers;
- (9) Any identified operational issues;
- (10) The number of enforcement actions against the used tire program; and
- (11) Any other performance indicators that are determined to be useful to evaluate performance and efficiency.
- (c) The evaluations under this section shall be completed on a biennial basis for each used tire program with the first evaluations to be completed on or before December 31, 2018.

History. Acts 2017, No. 317, § 1.

8-9-410. Incentives to consolidate used tire programs.

- (a) The General Assembly finds:
- (1) The smaller the population and geographical area that a used tire program serves, the more unsustainable the used tire program is;
- (2) In contrast, it has been noted nationally and within the state that used tire programs that serve a larger population and greater geographical area collect and process a large number of tires, are sustainable, and optimize the use of economies of scale;
- (3) Before January 1, 2017, there were eleven (11) waste tire districts in the state; and
- (4) It is in the best interest of the state for the used tire programs to combine to form inter-district used tire programs to operate in an efficient and financially sustainable manner.
- (b)(1) If a used tire program joins with other used tire programs to create an inter-district used tire program that serves a population of four hundred thousand (400,000) or more based on the most recent federal decennial census, the inter-district used tire program may receive a reimbursement of not more than twenty-five thousand dollars (\$25,000) each calendar year to assist with funding one (1) illegal dumps control officer position.
- (2) The reimbursement under subdivision (b)(1) of this section shall be paid quarterly to the used tire program subject to:
- (A) The availability and appropriation of funding; and
- (B) The employment of at least one (1) illegal dumps control officer by an eligible inter-district used tire program during the quarter for which reimbursement is requested.

History. Acts 2017, No. 317, § 1.

8-9-411. Tire transporters — Licenses.

(a) For all tire transporters licensed on or after January 1, 2018, a tire transporter shall meet the following requirements to perform or be compensated for any duties under this subchapter related to the administration and operation of a used tire program:

(1) Obtain for each vehicle a license;

(2) Obtain for each vehicle a tire transporter number provided by the Arkansas Department of Environmental Quality used for the electronic uniform used tire manifest system;

(3) Provide proof that each vehicle has passed an annual safety inspection;

(4) Provide proof of financial responsibility for each vehicle and authorized driver;

(5) Provide a bond in the amount of ten thousand dollars (\$10,000);

(6) Establish that each authorized driver has completed training for the electronic uniform used tire manifest system; and

(7) Pay a fee of fifty dollars (\$50.00) for each vehicle that is licensed.

(b) For each tire transporter licensed under this section, the department shall assign a tire transporter number and include the tire transporter information in the electronic uniform used tire manifest system.

(c)(1) If a tire transporter is found to have not complied with this subchapter, the tire transporter's license shall be suspended for three (3) months.

(2) If the license of a tire transporter is suspended more than one (1) time in three (3) years, the tire transporter's license shall be revoked and the tire transporter is ineligible for a tire transporter license for three (3) years.

History. Acts 2017, No. 317, § 1.

8-9-412. Additional fees.

(a) A used tire program may charge an additional fee for the collection and recycling of extra-large tires from sources other than registered tire retailers and for any tires in excess of the maximum under § 8-9-414(b)(7).

(b) If a used tire program charges an additional fee under this section, the fee shall be collected and retained by the used tire program for costs related to the processing of extra-large tires.

History. Acts 2017, No. 317, § 1.

8-9-413. Applicability.

The fees imposed by this subchapter shall not apply to:

- (1) Large retreaded tires;
- (2) Tires included as part of the equipment of a new vehicle; or
- (3) Tires included as part of the equipment of a used vehicle if included on the used vehicle at the time of sale and in the sales price of the used vehicle.

History. Acts 2017, No. 317, § 1.

8-9-414. Powers and duties of the Arkansas Pollution Control and Ecology Commission.

(a) The Arkansas Pollution Control and Ecology Commission shall promulgate regulations to carry out the intent and purposes of this subchapter.

(b) The regulations shall:

(1)(A) Except as provided under subdivision (b)(1)(B) of this section, provide for the administration of permits for tire processing facilities, tire collection centers, commercial generators, and any other person or entity that collects, receives, processes, recycles, or disposes of used tires regulated under this subchapter with the maximum permit fee not to exceed two hundred fifty dollars (\$250) annually.

(B) The maximum permit fee under this subdivision (b)(1) shall not apply to tire transporters;

(2) Establish standards for tire processing facilities, tire collection centers, tire transporters, and beneficial use projects;

(3) Establish procedures for administering reimbursements to used tire programs under § 8-9-405;

(4) Unless otherwise provided by law, authorize the final disposition of waste tires at a permitted solid waste disposal facility if the waste tires have been cut into sufficiently small parts for proper disposal and in compliance with this subchapter and all other applicable provisions in this title;

(5) Establish procedures for administering the electronic uniform used tire manifest system;

(6) Establish accountability procedures for the sustainability of used tire programs operated under this subchapter; and

(7)(A) Establish the number of tires that each individual who is a resident of a regional solid waste management district may discard monthly without a fee.

(B) The maximum number of tires under this subdivision (b)(7) shall not be more than four (4) tires per month.

(c) The commission may:

(1) Develop an alternative tire transporter licensing program to be administered by used tire programs, regional solid waste management boards, or both;

(2) Promulgate regulations that are necessary to administer the fees and reimbursement rates for services provided under this subchapter by the used tire programs; and

(3) Clarify and add definitions for sizes of tires using technical information and specifications.

(d)(1) The commission shall encourage the establishment of voluntary tire collection centers where used tires generated in Arkansas can be deposited.

(2) The voluntary tire collection centers shall include without limitation tire retailers, tire processing facilities, and solid waste disposal facilities.

(3) The voluntary tire collection centers shall not include the collection of tires generated by a tire manufacturer.

(e) The commission shall not prohibit the disposal of waste tires in landfills or monofills for three (3) years from August 1, 2017.

History. Acts 2017, No. 317, § 1.

8-9-415. Permitting, licensing, inspections, procedures, enforcement, and penalties.

(a) A person who receives funding under this subchapter, tire collection centers, tire retailers, tire processing facilities, tire transporters, tire generators, commercial generators, used tires regulated under this subchapter, and waste tire sites are subject to:

(1) All provisions in § 8-1-101 et seq., § 8-1-201 et seq., § 8-1-301 et seq., § 8-4-101 et seq., and § 8-4-201 et seq., concerning permits, licensing, inspections, and procedures;

(2) Sections 8-6-204 and 8-6-205, 8-6-207(a)(6), and 8-9-105 concerning penalties and enforcement; and

(3) All applicable regulations promulgated by the Arkansas Pollution Control and Ecology Commission.

(b) A used tire program is subject to penalties and enforcement under this subchapter for noncompliance with this subchapter to include without limitation:

(1) Failure to use the electronic uniform used tire manifest system;

(2) Failure to submit accurate information to the electronic uniform used tire manifest system;

(3) Failure to submit an approved business plan on or before July 1, 2018;

(4) Failure to submit a revised business plan as required under § 8-9-408(c);

(5) Failure to submit an approved revised business plan within three (3) months after submission; or

(6) Failure to provide documentation or reports required to be filed with the Arkansas Department of Environmental Quality under this subchapter.

(c)(1) If a used tire program fails to submit a business plan that is approved by the department on or before July 1, 2018, the used tire

program and all regional solid waste management boards included in the used tire program on July 1, 2018, are:

- (A) Ineligible to receive funding under this subchapter and from the Used Tire Recycling Fund;
 - (B) Prohibited from administering and operating a used tire program; and
 - (C) Prohibited from imposing any fees to support the administration and operation of a used tire program.
- (2)(A) The department may designate a qualified entity to perform the duties related to the operation and administration of a used tire program deemed ineligible under subdivision (c)(1) of this section.
- (B) A qualified entity that is designated to perform the duties related to the operation and administration of a used tire program under this subsection shall operate the used tire program in compliance with this subchapter.
- (C) If the qualified entity performs the duties related to the operation and administration of the used tire program in compliance with this subchapter, the qualified entity is eligible to receive funding under this subchapter and from the fund.
- (d) In addition to any other penalty provided by law, a tire processing facility permit or a tire collection center permit shall be suspended or revoked for noncompliance with this subchapter.

History. Acts 2017, No. 317, § 1.

SUBCHAPTER 5 — ARKANSAS NEWSPAPER RECYCLING ADVISORY COMMITTEE

SECTION.	SECTION.
8-9-501. Creation.	8-9-504. Schedule of compliance.
8-9-502. Members.	8-9-505. Attainment of goals.
8-9-503. Purpose.	8-9-506. Achievement of purpose.

8-9-501. Creation.

Recognizing that the recycling of newsprint, the use of recycled content newsprint, and the use of soy-based ink is a mutual concern to the State of Arkansas and the Arkansas newspaper industry, there is hereby created the Arkansas Newspaper Recycling Advisory Committee, which shall act in an advisory capacity to the Marketing Recyclables Program of the Compliance Advisory Panel.

History. Acts 1993, No. 991, § 1; 2017, No. 1067, § 6.

Amendments. The 2017 amendment substituted “Marketing Recyclables Program of the Compliance Advisory Panel” for “State Marketing Board for Recyclables”.

8-9-502. Members.

The Director of the Arkansas Department of Environmental Quality shall appoint the Arkansas Newspaper Recycling Advisory Committee consisting of:

(1) The Chief of the Marketing Division of the Arkansas Department of Environmental Quality or his or her designee;

(2) The Executive Director of the Arkansas Press Association, Inc. or his or her designee; and

(3)(A) At least six (6) members representing the Arkansas newspaper industry and newsprint manufacturers doing business in Arkansas.

(B) Provided, however, these members shall be selected from a list of names of potential members to be provided by the President of the Board of Directors of the Arkansas Press Association, Inc.

History. Acts 1993, No. 991, § 2; 1995, No. 658, § 1; 1999, No. 1164, § 116.

8-9-503. Purpose.

The Arkansas Newspaper Recycling Advisory Committee shall meet as necessary to monitor the use of recycled content newsprint and soy-based ink in the state in relation to the following goals:

(1) To increase the use of recycled content newsprint in Arkansas;

(2) To increase the use of soy-based ink in Arkansas;

(3) To increase the demand for recycled newsprint in Arkansas;

(4) To increase the availability of recycled content newsprint in Arkansas; and

(5) To identify, develop, and advance initiatives to recycle and reuse old newspapers.

History. Acts 1993, No. 991, § 3.

8-9-504. Schedule of compliance.

The Arkansas Newspaper Recycling Advisory Committee shall develop a schedule of compliance for newspapers printed on newsprint in Arkansas to phase in increased percentages of recycled fiber in their newsprint.

History. Acts 1993, No. 991, § 4.

8-9-505. Attainment of goals.

The Arkansas Newspaper Recycling Advisory Committee shall formulate a plan for an annual reporting of the progress toward the stated goals of this subchapter. Provided, however, that attainment of the percentage goals established by the committee shall be dependent upon recycled newsprint being available to Arkansas newspapers at a reasonable price, in reasonable quality, and in reasonable quantity as determined by the committee.

History. Acts 1993, No. 991, § 5.

8-9-506. Achievement of purpose.

In cooperation with the Marketing Recyclables Program of the Compliance Advisory Panel, the Arkansas Newspaper Recycling Advisory Committee shall develop and implement a plan to achieve the purposes of this subchapter.

History. Acts 1993, No. 991, § 6; 2017, No. 1067, § 7.

Amendments. The 2017 amendment substituted “Marketing Recyclables Pro-

gram of the Compliance Advisory Panel” for “State Marketing Board for Recyclables”.

SUBCHAPTER 6 — MERCURY SWITCH REMOVAL ACT OF 2005

SECTION.	SECTION.
8-9-601. Title.	8-9-607. Annual reporting.
8-9-602. Purpose.	8-9-608. Design for recycling.
8-9-603. Definitions.	8-9-609. Rules and regulations — Authority of Arkansas Pollution Control and Ecology Commission.
8-9-604. Mercury minimization plan.	
8-9-605. Plan approval and implementation.	8-9-610. Penalties and enforcement.
8-9-606. Removal and proper management of mercury-added vehicle components.	

8-9-601. Title.

This subchapter shall be known and may be cited as the “Mercury Switch Removal Act of 2005”.

History. Acts 2005, No. 649, § 1.

8-9-602. Purpose.

The purpose of this subchapter is to reduce the quantity of mercury in the environment by removing mercury switches from end-of-life vehicles and by creating a collection and recovery program for mercury switches removed from end-of-life vehicles in the State of Arkansas.

History. Acts 2005, No. 649, § 1.

8-9-603. Definitions.

As used in this subchapter:

- (1) “Capture rate” means the annual removal, collection, and recovery of mercury switches as a percentage of the total number of mercury switches available for removal from end-of-life vehicles;
- (2) “Department” means the Arkansas Department of Environmental Quality;
- (3) “Director” means the Director of the Arkansas Department of Environmental Quality;

(4) “End-of-life vehicle” means a vehicle that is sold, given, or otherwise conveyed to a vehicle recycler or scrap recycling facility for the purpose of recycling;

(5) “Manufacturer” means a person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture that is the last person in the production or assembly process of a new vehicle that utilizes mercury switches, or, in the case of an imported vehicle, the importer or domestic distributor of the vehicle;

(6) “Mercury minimization plan” means a plan for removing, collecting, and recovering mercury switches from end-of-life vehicles that is prepared pursuant to § 8-9-604;

(7) “Mercury switch” means each mercury-containing capsule, commonly known as a “bullet”, that is part of a convenience light switch assembly or part of an antilock braking system assembly installed in a vehicle. An antilock braking system assembly may contain more than one (1) mercury switch;

(8) “Person” means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, venture, or municipal, state, or federal government or agency or any other legal entity, however organized;

(9) “Scrap recycling facility” means a fixed location where machinery and equipment are used for processing and manufacturing scrap metal into prepared grades and whose principal products are scrap iron, scrap steel, or nonferrous metallic scrap for sale for remelting purposes;

(10) “Vehicle” means any passenger automobile or passenger car, station wagon, truck, van, or sport utility vehicle with a gross vehicle weight rating of less than twelve thousand pounds (12,000 lbs.); and

(11) “Vehicle recycler” means an individual or entity engaged in the business of acquiring, dismantling, or destroying six (6) or more end-of-life vehicles in a calendar year for the primary purpose of the resale of their parts.

History. Acts 2005, No. 649, § 1.

8-9-604. Mercury minimization plan.

(a) Within ninety (90) days after August 12, 2005, every manufacturer of vehicles sold within this state, individually or as part of a group, shall develop in consultation with the Arkansas Department of Environmental Quality a mercury minimization plan prepared pursuant to this section and shall submit the mercury minimization plan to the Director of the Arkansas Department of Environmental Quality for review and approval pursuant to § 8-9-605.

(b) The mercury minimization plan prepared and submitted pursuant to this section shall include the following at a minimum:

(1)(A) Information identifying the make, model, and year of vehicles, including current or anticipated future production models that may contain one (1) or more mercury switches, a description of the mercury switches, a system to mark vehicles to be processed for

shredding or crushing to indicate the presence or absence of mercury switches, the location of these mercury switches, and the safe and environmentally sound methods for removal of mercury switches from end-of-life vehicles.

(B) To the extent a manufacturer is uncertain as to the content of a switch installed during the manufacture of a vehicle, the mercury minimization plan shall presume that the switch is a mercury switch;

(2) Educational materials to assist a vehicle recycler or a scrap recycling facility in undertaking a safe and environmentally sound method for the removal of the mercury switches from end-of-life vehicles, including information on the hazards related to mercury and the proper handling of mercury;

(3) A proposal for the method of storage or disposal of the mercury switches, including the method of packaging and shipping mercury switches to authorized recycling, storage, or disposal facilities;

(4) A proposal for the storage of mercury switches collected and recovered from end-of-life vehicles if environmentally appropriate management technologies are not available; and

(5) A plan for implementing and financing the system in accordance with subsection (d) of this section.

(c) To the extent practicable, a mercury minimization plan shall use the existing end-of-life vehicle recycling infrastructure. If the existing end-of-life vehicle recycling infrastructure is not used, the mercury minimization plan shall include the reasons for establishing a separate infrastructure.

(d)(1) A mercury minimization plan shall provide for the financing of the removal, collection, and recovery system for mercury switches installed in vehicles manufactured by the manufacturer and its predecessors and affiliates as provided in this subsection.

(2) These costs shall be borne by the manufacturers of vehicles sold in the state, ensuring that additional financial burdens are not placed on automobile dealers or businesses dealing with end-of-life vehicles. The manufacturers shall develop a method that ensures the prompt payment to vehicle recyclers, scrap recycling facilities, and the department for costs associated with mercury switch removal and disposal. Costs shall include, but not be limited to, the following:

(A) A minimum of five dollars (\$5.00) for each mercury switch removed by a vehicle recycler pursuant to § 8-9-606(a) as partial compensation for the labor and other costs incurred by a vehicle recycler in the removal of the mercury switch;

(B) A minimum of five dollars (\$5.00) for each mercury switch removed by a scrap recycling facility pursuant to § 8-9-606(b) as partial compensation for the labor and other costs incurred by a scrap recycling facility in the removal of the mercury switch;

(C) One dollar (\$1.00) for each mercury switch removed by a vehicle recycler pursuant to § 8-9-606(a) or by a scrap recycling facility pursuant to § 8-9-606(b) as partial compensation to the department for costs incurred in administering and enforcing the provisions of this subchapter;

(D) Packaging in which to transport mercury switches to recycling, storage, or disposal facilities;

(E) Shipping of mercury switches to recycling, storage, or disposal facilities;

(F) Recycling, storage, or disposal of the mercury switches;

(G) The preparation and distribution to vehicle recyclers and scrap recycling facilities of the educational materials required pursuant to subdivision (b)(2) of this section; and

(H) Maintenance of all appropriate record-keeping systems.

(e) Within thirty (30) days after August 12, 2005, every manufacturer of vehicles sold within the state, individually or as part of a group, shall provide to vehicle recyclers and scrap recycling facilities containers suitable for storing mercury switches until such time that vehicle recyclers and scrap recycling facilities can be reimbursed pursuant to this section.

(f) Manufacturers of vehicles sold within the state shall provide vehicle recyclers or scrap recycling facilities with reimbursement for each mercury switch in the amount established pursuant to this section regardless of when these mercury switches were removed from the vehicles if the vehicle recyclers or scrap recycling facilities maintain the records required by § 8-9-606.

(g) Manufacturers shall indemnify, defend, and hold harmless vehicle recyclers and scrap recycling facilities for any liabilities arising from the release of the mercury from the mercury-added components after the components are transferred to the manufacturer or its agent or contractor.

History. Acts 2005, No. 649, § 1.

8-9-605. Plan approval and implementation.

(a)(1) Within one hundred twenty (120) days after receipt of a mercury minimization plan, the Director of the Arkansas Department of Environmental Quality shall approve, disapprove, or conditionally approve the entire mercury minimization plan. The director may solicit input from representatives of vehicle recyclers, scrap recycling facilities, and other stakeholders as the director deems appropriate.

(2)(A) If the entire mercury minimization plan is approved, the manufacturer shall begin implementation within thirty (30) days after receipt of approval or as otherwise agreed to by the director.

(B) If the entire mercury minimization plan is disapproved, the director shall inform the manufacturer as to the reasons for the disapproval. The manufacturer shall have thirty (30) days thereafter to submit a new mercury minimization plan.

(3)(A) The director may approve those parts of a mercury minimization plan that meet the requirements of § 8-9-604 and disapprove the parts that do not comply with the requirements of § 8-9-604.

(B) The manufacturer shall implement the approved parts of the mercury minimization plan within thirty (30) days after receipt of

approval or as otherwise agreed to by the director and submit a revised mercury minimization plan for the disapproved parts within thirty (30) days after receipt of notification of the disapproval of the director.

(C) The director shall review and approve, conditionally approve, or disapprove a revised mercury minimization plan within thirty (30) days after receipt.

(4)(A) If at the conclusion of the time period of one hundred twenty (120) days after receipt of a mercury minimization plan the director has neither approved nor disapproved the mercury minimization plan pursuant to subdivision (a)(2)(A) or subdivision (a)(2)(B) of this section, the mercury minimization plan shall be considered to be conditionally approved.

(B) Subject to any modifications required by the director, a manufacturer shall implement a conditionally effective mercury minimization plan within thirty (30) days after receipt of approval or as otherwise agreed to by the director.

(b) At the conclusion of a time period two hundred forty (240) days after August 12, 2005, the director shall reserve the right to complete on behalf of a manufacturer any portion of a mercury minimization plan that has not been approved pursuant to this section.

(c) The director may review a mercury minimization plan approved pursuant to this section and recommend modifications to the plan at any time upon a finding that the approved mercury minimization plan is deficient or not accomplishing the purposes set out in this subchapter in any material respect.

History. Acts 2005, No. 649, § 1.

8-9-606. Removal and proper management of mercury-added vehicle components.

(a) Commencing thirty (30) days after the approval or conditional approval of a mercury minimization plan pursuant to § 8-9-605, a vehicle recycler that sells, gives, or otherwise conveys ownership of an end-of-life vehicle to a scrap recycling facility for recycling shall remove all mercury switches identified in the approved mercury minimization plan from the end-of-life vehicle prior to delivery to a scrap recycling facility, unless a mercury switch is inaccessible due to significant damage to the end-of-life vehicle in the area surrounding the location of the mercury switch, in which case the damage shall be noted on the normal business records of the vehicle recycler who delivered the end-of-life vehicle to the scrap recycling facility.

(b) Notwithstanding subsection (a) of this section, a scrap recycling facility may agree to accept an end-of-life vehicle containing mercury switches that has not been intentionally flattened, crushed, or baled, in which case the scrap recycling facility shall be responsible for removing the mercury switches identified in the mercury minimization plan

approved pursuant to § 8-9-605 before the end-of-life vehicle is intentionally flattened, crushed, baled, or shredded.

(c)(1) A vehicle recycler or scrap recycling facility that removes mercury switches pursuant to subsection (a) or subsection (b) of this section shall maintain records documenting the number of:

- (A) Mercury switches collected;
- (B) End-of-life vehicles containing mercury switches;
- (C) End-of-life vehicles processed for recycling;
- (D) The makes and models of end-of-life vehicles from which mercury switches were removed; and
- (E) Mercury switches collected from each make.

(2) These records shall be made available for review by the Arkansas Department of Environmental Quality upon the request of the department.

(d) No person shall represent that mercury switches have been removed from an end-of-life vehicle being sold, given, or otherwise conveyed for recycling if that person has not removed the mercury switches or arranged with another person to remove the mercury switches.

(e) Upon removal, mercury switches shall be collected, stored, transported, and otherwise handled in accordance with the:

- (1) Mercury minimization plan approved pursuant to § 8-9-605; and
- (2) Provisions of the rules and regulations concerning universal waste adopted by the department pursuant to the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.

(f) No scrap recycling facility or other person that receives an intentionally flattened, crushed, or baled end-of-life vehicle shall be in violation of this subchapter if a mercury switch is found in the end-of-life vehicle after its acquisition.

History. Acts 2005, No. 649, § 1.

8-9-607. Annual reporting.

(a) One (1) year after the implementation of a mercury minimization plan approved pursuant to § 8-9-605, and annually thereafter, a manufacturer subject to § 8-9-604 shall report individually or as part of a group to the Director of the Arkansas Department of Environmental Quality concerning the implementation of the mercury minimization plan. The report shall include, but need not be limited to, the following:

(1) A detailed description and documentation of the capture rate achieved, with the goal of achieving a mercury switch capture rate of at least ninety percent (90%), consistent with the principle that mercury switches shall be recovered unless the mercury switch is inaccessible due to significant damage to the end-of-life vehicle in the area surrounding the location of the mercury switch;

(2) A description of additional or alternative actions that may be implemented to improve the mercury minimization plan and its imple-

mentation in the event that a mercury switch capture rate of at least ninety percent (90%) is not achieved;

(3) The number of mercury switches collected, the number of end-of-life vehicles containing mercury switches, the number of end-of-life vehicles processed for recycling, and a description of how the mercury switches were managed; and

(4) A description of the amounts paid to cover the costs of implementing the mercury minimization plan.

(b) The director may discontinue the requirement for the annual report pursuant to subsection (a) of this section upon a finding that mercury switches in end-of-life vehicles manufactured by a particular manufacturer no longer pose a significant threat to the environment or to public health.

History. Acts 2005, No. 649, § 1.

8-9-608. Design for recycling.

(a) One (1) year after the implementation of a mercury minimization plan approved pursuant to § 8-9-605, and annually thereafter, a manufacturer subject to § 8-9-604 shall report individually or as part of a group to the Director of the Arkansas Department of Environmental Quality concerning the steps being taken by manufacturers to design vehicles and their components for recycling. The report shall include, but need not be limited to, the following:

(1) A list of all vehicle components that contain mercury included in the manufacturer's vehicles in each of the previous three (3) model years, the current model year, and the next upcoming model year;

(2) Design changes that each manufacturer has implemented or is implementing to reduce or eliminate from its vehicles all sources of mercury listed in compliance with subdivision (a)(1) of this section, the amount of any reductions, and the year in which mercury will be eliminated from each of the vehicle components listed in compliance with subdivision (a)(1) of this section;

(3) Policies that each manufacturer has implemented to ensure that its vehicles are designed to be recycled in a safe, cost effective, and environmentally sound manner using existing technologies and infrastructures;

(4) A listing of all:

(A) Complaints and reports that the manufacturer has received within the last twelve (12) months from vehicle recyclers, scrap recycling facilities, government entities, or organizations representing any of the persons; or

(B) Other facts and circumstances that have made the manufacturer aware that the manufacturer's vehicles contain vehicle components or are designed in such a way that presents environmental risks that make it uneconomical to recycle the vehicles or components; and

(5) The design or manufacturing changes that the manufacturer has implemented or is implementing to reduce or remove any environmental risks listed in compliance with subdivision (a)(4) of this section and the year in which design changes will eliminate the environmental risk listed in compliance with subdivision (a)(4) of this section.

(b) The Arkansas Department of Environmental Quality may conduct hearings from time to time as the director deems appropriate to evaluate the steps manufacturers are taking to design for recycling and to recommend additional legislative action as may be appropriate in order to promote vehicle recycling for the purposes of the preservation of scarce resources and the safe and efficient reduction of solid waste.

History. Acts 2005, No. 649, § 1.

8-9-609. Rules and regulations — Authority of Arkansas Pollution Control and Ecology Commission.

The Arkansas Pollution Control and Ecology Commission may adopt rules and regulations to effectuate and implement the purposes and intent of this subchapter and the powers and duties of the Arkansas Department of Environmental Quality.

History. Acts 2005, No. 649, § 1.

8-9-610. Penalties and enforcement.

(a) Any person who violates any provisions of this subchapter or any rule or order issued pursuant to this subchapter shall be subject to the same penalty and enforcement provisions as are contained in § 8-6-204.

(b) Except as otherwise provided in this subchapter, the procedure of the Arkansas Pollution Control and Ecology Commission for issuance of rules, conduct of hearings, notice, power of subpoena, review of action on permits, right of appeal, presumptions, finality of actions, and related matters shall be as provided in §§ 8-4-101 — 8-4-106 and 8-4-201 — 8-4-229 of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., including, without limitation, §§ 8-4-205, 8-4-210, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229.

History. Acts 2005, No. 649, § 1.

CHAPTER 10

POLLUTION PREVENTION

SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]**
- 2. ARKANSAS POLLUTION PREVENTION ACT.**
- 3. SPECIFIC POLLUTION PREVENTION MEASURES.**
- 4. PUBLIC SURFACE WATER SUPPLY PROTECTION ACT.**

RESEARCH REFERENCES

Am. Jur. 61B Am. Jur. 2d, Pollution Control, § 1 et seq.

C.J.S. 39A C.J.S., Health & Environment, § 93 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved.]

SUBCHAPTER 2 — ARKANSAS POLLUTION PREVENTION ACT

SECTION.	SECTION.
8-10-201. Title.	8-10-204. Hierarchy of waste minimization.
8-10-202. Legislative intent.	
8-10-203. Definitions.	8-10-205. Powers and duties.

8-10-201. Title.

This subchapter may be cited as the “Arkansas Pollution Prevention Act”.

History. Acts 1993, No. 1273, § 1.

8-10-202. Legislative intent.

(a) The General Assembly finds that the timely development of a comprehensive pollution prevention and waste minimization plan for the prevention and reduction of the amount of solid, hazardous, and industrial wastes produced within the state is essential to determine the scope and need for off-site waste management facilities.

(b)(1) The General Assembly further finds that it is essential to ensure that the state fulfills its responsibilities under the Superfund Amendments and Reauthorization Act of 1986 to provide for the availability of adequate capacity for the management of wastes by implementing a comprehensive pollution prevention plan.

(2) This plan should encourage the minimization of wastes produced by means of source reduction, process change, feed stock substitution, recycling, and reuse for both hazardous and nonhazardous waste streams.

(3) Waste that is generated should be minimized to the greatest practicable extent, treated on-site, and stored and recycled or disposed of so as to protect human health and the environment.

(c) The purpose of this subchapter is to prevent pollution, minimize the amount of solid, hazardous, and industrial wastes generated, and conserve energy within the state as expeditiously as possible.

History. Acts 1993, No. 1273, § 1.

U.S. Code. The Superfund Amendments and Reauthorization Act of 1986, referred to in this section, is codified gen-

erally as 10 U.S.C. § 2701 et seq., 42 U.S.C. § 6991 et seq., and 42 U.S.C. § 9601 et seq.

8-10-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Disposal" means the discharge, deposit, injection, dumping, spilling, leakage, or placing of any waste into or on any land or water in whatever manner so that such waste or any constituent thereof might enter the environment or be emitted into the air or discharged into any waters of the state, including groundwaters;

(2) "Generation" means the act or process of producing waste materials;

(3) "Generator" means any individual, business, government agency, or any other organization that generates waste;

(4) "Hazardous waste" means hazardous waste as defined by the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., and regulations issued pursuant thereto;

(5) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company, state agency, government instrumentality or agency, institution, or county, city, town, or municipal authority or trust, venture, or any other legal entity, however organized;

(6)(A) "Pollution prevention" means any action taken by industry, government, or individual consumers to conserve natural resources while providing and using needed products in a manner which prevents or reduces the generation, disposal, or release of pollutants to the environment.

(B) "Pollution prevention" does not include dewatering, dilution, or evaporation prior to handling, release, storage, treatment, or disposal of hazardous waste; and

(7) "Source reduction" or "waste minimization" means the reduction or elimination of waste at the source, usually within a manufacturing process, including process modification, feed stock substitutions, improvement in feed stock purity, housekeeping and management practices, increases in the efficiency of machinery, on-site closed-loop recycling, or any other action which demonstrably reduces the amount and toxicity of the waste exiting the production process.

History. Acts 1993, No. 1273, § 1.

8-10-204. Hierarchy of waste minimization.

It is the policy of the state to adhere to the following hierarchy of waste minimization and management:

(1) Reduce waste production at the source;

(2) Recover and reuse resources and wastes;

(3) Recycle on-site or, if this is not feasible, off-site;

(4) Treat wastes to reduce volume and toxicity, including incineration; and

(5) Dispose of any remaining wastes in a manner which serves to protect the quality of air, water, and land resources.

History. Acts 1993, No. 1273, § 1.

8-10-205. Powers and duties.

The Governor shall designate the state agency or agencies which shall have the following powers and duties pursuant to this subchapter to:

- (1) Compile, organize, and make available for distribution information on pollution prevention technologies and procedures;
- (2) Compile and make available for distribution to business and industry a list of expert private consultants on pollution prevention technologies and procedures and a list of researchers at state universities providing assistance in pollution prevention activities;
- (3) Sponsor and conduct conferences and individualized workshops and seminars on pollution prevention for specific classes of business or industry;
- (4) Conduct feasibility analyses for innovative pollution prevention technologies and procedures;
- (5) Facilitate and promote the transfer of pollution prevention technologies and procedures between business and industries;
- (6) Develop, when appropriate, and distribute for voluntary implementation pollution prevention plans for the major classes of industry that generate and subsequently treat, store, or dispose of waste in the state;
- (7) Develop and make available for distribution recommended waste audit procedures and protocols for utilization by business and industry in conducting internal waste audits;
- (8) Provide on-site assistance upon request to business and industry for the purpose of identifying potential techniques for pollution prevention and assisting in conducting internal waste audits;
- (9) Compile and make available for distribution information on available tax benefits for the implementation of pollution prevention technologies and procedures by an industry or business;
- (10) Establish goals for voluntary waste reduction within the state, including the identification of key industries and businesses which should receive priority assistance;
- (11) Identify governmental and nongovernmental impediments to pollution prevention;
- (12) Develop the necessary information base and data collection programs to assist in establishing program priorities and evaluating the progress of reducing wastes;
- (13) Develop training programs and materials for state and local regulatory personnel and private industry designed to inform them about pollution prevention practices and their applicability to industry;
- (14) Participate in existing state, federal, and industrial networks of individuals and groups actively involved in pollution prevention activities;
- (15) Establish an award program for outstanding examples of success in pollution prevention and waste minimization; and

(16) Publicize to business and industry and participate in and support waste exchange programs.

History. Acts 1993, No. 1273, § 1.

SUBCHAPTER 3 — SPECIFIC POLLUTION PREVENTION MEASURES

SECTION.

8-10-301. Sale of certain batteries prohibited — Disposal requirements — Definitions.

8-10-302. Construction of motor vehicle racing facility — Requirement — Definition.

SECTION.

8-10-303. Permit requirement — Definition.

8-10-304. Motor vehicle racing facilities in certain municipalities — Definition.

Effective Dates. Acts 1995, No. 1191, § 44: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1997, No. 1015, § 43: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

8-10-301. Sale of certain batteries prohibited — Disposal requirements — Definitions.

(a) Alkaline manganese batteries manufactured on or after January 1, 1996, shall not be sold in this state if the alkaline manganese battery contains any intentionally introduced mercury, as distinguished from mercury which may be incidentally present in other materials, except, however, that the limitation on mercury content in alkaline manganese button cells shall be twenty-five milligrams (25 mg) of mercury per button cell.

(b) Zinc carbon batteries manufactured on or after January 1, 1994, shall not be sold in this state if the zinc carbon battery contains any intentionally introduced mercury.

(c)(1) It shall be illegal to sell consumer mercuric oxide button cell batteries in this state on or after January 1, 1994.

(2) As used in this subsection, "consumer mercuric oxide button cell batteries" means batteries which contain mercuric oxide electrodes, resemble buttons in size and shape, and are used in consumer products such as hearing aids.

(d)(1)(A) On or after January 1, 1994, no person shall dispose of mercuric oxide batteries in municipal solid waste or in medical waste.

(B) Mercuric oxide batteries are subject to disposal or recycling under the provisions of or pursuant to the provisions of the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.

(2) As used in this subsection, "mercuric oxide batteries" means batteries containing mercuric oxide electrodes, except that consumer mercuric oxide button cell batteries are excluded from the definition.

(e) The Arkansas Pollution Control and Ecology Commission may promulgate, modify, or repeal rules or regulations as necessary or appropriate to implement or effectuate the purpose and intent of this section.

(f) Any person violating any provision of this section or of any rule, regulation, or order issued pursuant to this section shall be subject to the same penalty and enforcement provisions as are contained in § 8-6-204.

History. Acts 1993, No. 952, § 1.

8-10-302. Construction of motor vehicle racing facility — Requirement — Definition.

(a)(1) Due to the noise, air pollution, and traffic congestion caused by motor vehicle racing facilities, no motor vehicle racing facility may be constructed in this state after passage of this act without the consent of at least seventy-five percent (75%) of the property owners and seventy-five percent (75%) of the registered voters within three (3) miles of the outside boundary of the proposed motor vehicle racing facility.

(2)(A) Such consent shall be accomplished by signing petitions that shall be filed with the city clerk if the motor vehicle racing facility is to be located within the boundaries of any city or town or with the county clerk if the motor vehicle racing facility is to be located wholly or partially outside the boundaries of any city or town.

(B) The petitions shall indicate:

(i) The name;

(ii) The residence address or, if a nonresident property owner, the address or legal description of the property located within the three-mile area; and

(iii) The date of the signature.

(C)(i) The petitions must be verified pursuant to § 7-9-109.

(ii) Signatures shall become invalid sixty (60) days after signing.

(iii) It shall be the duty of the county clerk or city clerk, as the case may be, to determine the sufficiency of the signatures and to certify

the sufficiency or insufficiency of the signatures in writing to the Arkansas Department of Environmental Quality.

(b) As used in this section, “motor vehicle racing facility” means any facility designed and used for competitive racing by automobiles or trucks that are modified for racing.

History. Acts 1995, No. 1191, § 40; 1997, No. 551, § 2; 1997, No. 1015, § 35; 1999, No. 674, § 1; 2005, No. 1409, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207, the repeal of this section by Acts 1997, No. 551, § 2 was superseded by the amendment of this section by Acts 1997,

No. 1015.

Publisher’s Notes. In reference to the term “passage of this act” in subdivision (a)(1), Acts 1995, No. 1191 was approved on April 11, 1995, and became effective July 1, 1995.

8-10-303. Permit requirement — Definition.

(a)(1)(A) Due to the noise pollution and air pollution from the racing vehicles and traffic congestion caused by motor vehicle racing facilities, no motor vehicle racing facility shall be constructed in this state after passage of this section without the consent of at least seventy-five percent (75%) of the property owners and seventy-five percent (75%) of the registered voters within three (3) miles of the outside boundary of the proposed motor vehicle racing facility and without an annual permit issued by the Arkansas Department of Environmental Quality.

(B) The consent shall be required for the initial annual permit only.

(2)(A) Consent shall be accomplished by signing petitions which shall be filed with the city clerk if the motor vehicle racing facility is to be located within the boundaries of any city or town or with the county clerk if the motor vehicle racing facility is to be located wholly or partially outside the boundaries of any city or town.

(B) The petitions shall indicate:

(i) The name;

(ii) The residence address or, if a nonresident property owner, the address or legal description of the property located within the three-mile area; and

(iii) The date of the signature.

(C)(i) The petitions must be verified pursuant to § 7-9-109.

(ii) Signatures shall become invalid sixty (60) days after signing.

(iii) It shall be the duty of the county clerk or city clerk, as the case may be, to determine the sufficiency of the signatures and to certify the sufficiency or insufficiency of the signatures in writing to the department.

(3)(A)(i) Once the sufficiency of the petitions is determined, the persons or entity proposing and constructing a motor vehicle racing facility after August 1, 1997, shall seek the approval of and issuance of an annual permit from the department. The department’s approval shall be sought by filing a permit application with the department.

(ii) Initial permit applications for new motor vehicle racing facilities to be constructed shall have attached a written proposal for the motor vehicle racing facility containing the substance of the proposed facility, including:

(a) A description of the types of motor vehicles proposed for racing at the motor vehicle racing facility;

(b) The maximum projected noise level of the racing vehicles;

(c) A description of the kinds of races and the types of buildings, stands, or other physical plant proposed for the motor vehicle racing facility;

(d) Estimates of traffic counts and numbers of spectators; and

(e) Any other relevant permit information as may be determined necessary for the permit application by the department.

(B) For the initial permit application for new motor vehicle racing facilities to be constructed, the department shall conduct a public hearing on the proposed motor vehicle racing facility. The department shall set a date for the public hearing to be held on the proposed motor vehicle racing facility permit which shall not be less than thirty (30) days after the filing of the initial permit application. The hearing under this subdivision (a)(3)(B) for the initial permit may be adjourned and continued if necessary. In its discretion, the department may hold public hearings for the renewal of any permits as is necessary. Any interested persons may appear and contest the granting of the approval or renewal of the motor vehicle racing facility permit. Affidavits in support of or against the proposed motor vehicle racing facility or a permit renewal, which may be prepared and submitted, shall be examined by the department.

(C) After the hearing for the initial permit or upon application for the renewal of its annual permit, if the department shall be satisfied that the benefits of the motor vehicle racing facility are sustained by proof and outweigh its impact by the noise, air pollution, and traffic congestion caused by motor vehicle racing facilities, then the department shall grant the initial permit approving the proposed motor vehicle racing facility or shall renew approval to the permitted or existing motor vehicle racing facility. Renewal of an annual permit may also be denied if:

(i) The motor vehicle racing facility is determined to be in violation of any standards under which the permit was issued;

(ii) The motor vehicle racing facility is constructed or is being operated in a manner that is materially different than was represented during the petition process; or

(iii) Fraud, misrepresentation, or false statement of facts was used to obtain signatures for the petition process.

(D) If any material changes, additions, or improvements are made to the motor vehicle racing facility, the permit shall be amended accordingly, and the department may reconsider the approval of the permit.

(E) The Arkansas Pollution Control and Ecology Commission shall have the authority to promulgate all necessary rules and regulations

to implement this section, including the authority to set a permit fee to recover the cost of issuing the permit.

(b) As used in this section, “motor vehicle racing facility” means any facility designed and used for competitive racing by automobiles or trucks that are modified for racing.

(c) Within one (1) year of August 1, 1999, each motor vehicle racing facility constructed in Arkansas after January 1, 1995, shall apply for and shall receive an initial annual permit to operate its motor vehicle racing facility. Thereafter, upon the annual renewal date for its permit, the motor vehicle racing facility constructed after January 1, 1995, shall apply annually for renewal of its permit.

History. Acts 1997, No. 551, § 1; 1999, No. 674, § 2; 1999, No. 1164, §§ 117, 118; 2005, No. 1409, § 2.

Publisher’s Notes. In reference to the

term “passage of this section” in subdivision (a)(1)(A), Acts 1997, No. 551, was approved on March 17, 1997, and became effective August 1, 1997.

8-10-304. Motor vehicle racing facilities in certain municipalities — Definition.

(a) Sections 8-10-302 and 8-10-303 do not apply to any motor vehicle racing facilities located in a county having a population between eighty thousand (80,000) and ninety thousand (90,000) according to the 1990 Federal Decennial Census and that are:

- (1) South of a navigable waterway that traverses the state; or
- (2) More than two (2) miles from an interstate highway, public or private school, or church facility in place at the time of the original permit application.

(b)(1)(A) A person or entity proposing and constructing a motor vehicle racing facility under subsection (a) of this section shall seek the approval of and issuance of an annual permit from the Arkansas Department of Environmental Quality.

(B) The department’s approval shall be sought by filing a permit application with the department, which shall contain a written proposal for the motor vehicle racing facility containing the substance of the proposed facility, including:

- (i) A description of the types of motor vehicles proposed for racing at the motor vehicle racing facility;
- (ii) The maximum projected noise level of the racing vehicles;
- (iii) A description of the kinds of races and the types of buildings, stands, or other physical plants proposed for the motor vehicle racing facility;
- (iv) Estimates of traffic counts and numbers of spectators; and
- (v) Any other relevant permit information as may be determined necessary for the permit application by the department.

(2)(A)(i) For the initial permit application for new motor vehicle racing facilities to be constructed, the department shall conduct a public hearing on the proposed motor vehicle racing facility.

(ii) The department shall set a date for the public hearing to be held on the proposed motor vehicle racing facility permit which shall

not be fewer than thirty (30) days after the filing of the initial permit application.

(iii) The hearing under this subdivision (b)(2) for the initial permit may be adjourned and continued if necessary.

(B)(i) The department, in its discretion, may hold public hearings for the renewal of any permits as is necessary.

(ii) Any interested persons may appear and contest the granting of the approval or renewal of the motor vehicle racing facility permit.

(iii) Affidavits in support of or against the proposed motor vehicle racing facility or a permit renewal, which may be prepared and submitted, shall be examined by the department.

(3) After the hearing for the initial permit or upon application for the renewal of its annual permit, if the department is satisfied that the benefits of the motor vehicle racing facility are sustained by proof and outweigh its impact by the noise, air pollution, and traffic congestion caused by motor vehicle racing facilities, then the department shall grant the initial permit approving the proposed motor vehicle racing facility or shall renew approval to the permitted or existing motor vehicle racing facility.

(4) Renewal of an annual permit may also be denied if:

(A) The motor vehicle racing facility is determined to be in violation of any standards under which the permit was issued; or

(B) The motor vehicle racing facility is constructed or is being operated in a manner that is materially different than was represented during the initial application process.

(5) If any material changes, additions, or improvements are made to the motor vehicle racing facility, the permit shall be amended accordingly, and the department may reconsider the approval of the permit.

(6) The Arkansas Pollution Control and Ecology Commission shall have the authority to promulgate any and all necessary rules and regulations to implement this section, including the authority to set a permit fee to recover the cost of issuing the permit.

(c) Each motor vehicle racing facility constructed in an area under this section that applies for and receives an initial annual permit to operate its motor vehicle racing facility shall thereafter apply annually for renewal of its permit.

(d) As used in this section, “motor vehicle racing facility” means any facility designed and used for competitive racing by automobiles or trucks that are modified for racing.

(e) Due to the noise pollution and air pollution from the racing vehicles and traffic congestion caused by motor vehicle racing facilities, no motor vehicle racing facility shall be permitted or constructed under this section within one (1) mile of the boundary of another county.

History. Acts 2001, No. 1413, § 1;
2009, No. 1287, §§ 1–3.

SUBCHAPTER 4 — PUBLIC SURFACE WATER SUPPLY PROTECTION ACT

SECTION.

8-10-401. Title.

8-10-402. Legislative findings and purpose.

8-10-403. Definitions.

SECTION.

8-10-404. Cut-off valve and training.

8-10-405. Risk mitigation and response plan.

8-10-401. Title.

This subchapter shall be known and may be cited as the “Public Surface Water Supply Protection Act”.

History. Acts 2013, No. 1484, § 1.

8-10-402. Legislative findings and purpose.

(a) The General Assembly finds that:

(1) Clean water resources are essential to being able to effectively provide economic opportunities in the state; and

(2) Protecting the water resources of the state will improve Arkansas’s ability to promote the abundant assets of the state as the land of opportunity and encourage the development of additional economic opportunities in Arkansas.

(b) The purpose of this subchapter is to encourage petroleum pipeline owners and operators to work with the state to protect and improve water resources and economic opportunities in Arkansas by reducing the risk of pipeline petroleum spills into the public surface water drinking supplies in the state.

History. Acts 2013, No. 1484, § 1.

8-10-403. Definitions.

As used in this subchapter:

(1) “Petroleum” means crude oil, gasoline, or any other nonvaporous petroleum product carried in a pipeline that crosses into the watershed of a public surface water supply;

(2)(A) “Public surface water supply” means a body of water, including without limitation a river, lake, reservoir, or other impoundment and the watershed that drains into the river, lake, reservoir, or other impoundment that is owned, leased, or otherwise used by a public water provider.

(B) “Public surface water supply” does not include water contained in an aquifer or aboveground water storage tank;

(3)(A) “Public water provider” means an entity that provides water for domestic, business, or industrial purposes.

(B) “Public water provider” includes without limitation a consolidated waterworks system created under the Consolidated Waterworks Authorization Act, § 25-20-301 et seq., city government,

county government, regional water district, and nonprofit organization; and

(4) “Watercourse” means a river, stream, bayou, cove, or canal.

History. Acts 2013, No. 1484, § 1.

8-10-404. Cut-off valve and training.

For each petroleum pipeline that crosses a watercourse that empties into a public surface water supply above ground or below ground, the owner or operator of the petroleum pipeline is encouraged to:

(1) Install a cut-off valve capable of:

(A) Automatically sensing a loss of petroleum flowing in the petroleum pipeline; and

(B) Automatically and manually cutting off the flow of petroleum on each side of each watercourse that discharges into a public surface water supply; and

(2) Provide annually to critical staff for the petroleum pipeline operator, the public water provider, and state and local emergency response providers either direct training or funding for training by a third party.

History. Acts 2013, No. 1484, § 1.

8-10-405. Risk mitigation and response plan.

(a) An owner or operator of a petroleum pipeline is encouraged to create a detailed risk mitigation and response plan for each petroleum pipeline in the watershed of a public surface water supply.

(b) An effective risk mitigation and response plan under subsection (a) of this section:

(1) States clearly each party responsible for implementing the risk mitigation and response plan on behalf of the petroleum pipeline owner or operator; and

(2) Includes at least the following:

(A) Quarterly visual inspection of each petroleum pipeline;

(B) An early notification system for each relevant public water provider;

(C) Plans for the construction of containment berms;

(D) Detailed information on the product being carried in each petroleum pipeline;

(E) The annual training requirements for emergency response personnel; and

(F) A safety-related capital improvement plan that includes without limitation the following:

(i) The removal of aboveground petroleum pipeline crossings;

(ii) The installation of additional valves and valve controls; and

(iii) The construction of additional response structures and facilities.

(c) The petroleum pipeline owner or operator is encouraged to submit any risk mitigation and response plan developed under this section to the Department of Health and the appropriate public water provider for comment.

History. Acts 2013, No. 1484, § 1.

CHAPTER 11

ARKANSAS ENVIRONMENTAL REGULATORY FLEXIBILITY ACT

SECTION.

8-11-101. Title.

8-11-102. Purpose.

SECTION.

8-11-103. Regulatory flexibility.

8-11-101. Title.

This chapter may be known and may be cited as the “Arkansas Environmental Regulatory Flexibility Act”.

History. Acts 1999, No. 500, § 1.

8-11-102. Purpose.

(a) The improvement of the environment of the State of Arkansas is a matter of concern to all citizens of this state, and existing environmental law plays a critical role in protecting the environment.

(b) Environmental protection could be enhanced by authorizing innovative advances in environmental regulatory methods.

(c) Arkansas should develop environmental regulatory methods that:

(1) Encourage facility owners and operators to assess the pollution they emit or cause, directly and indirectly, to the air, water, and land;

(2) Encourage facility owners and operators to innovate, set measurable and verifiable goals, and implement the most effective pollution prevention, source reduction, or other pollution reduction strategies for their particular facilities while complying with verifiable and enforceable pollution limits;

(3) Reward facility owners and operators that reduce pollution to levels below those required by applicable law; and

(4) Reduce the time and money spent by agencies and facility owners and operators on paperwork and other administrative tasks that do not benefit the environment.

History. Acts 1999, No. 500, § 1.

8-11-103. Regulatory flexibility.

(a)(1) The Arkansas Department of Environmental Quality, by order of the Director of the Arkansas Department of Environmental Quality consistent with the purposes of this chapter, may approve requests

which allow an applicant to use alternative methods to comply with an Arkansas Pollution Control and Ecology Commission rule regarding the control or abatement of pollution.

(2) However, the applicant must propose to control or abate pollution by an alternative method, provided the alternative method is:

- (A) Quantifiable, measurable, and enforceable;
- (B) At least as protective of the environment and the public health as the method prescribed by the requirement or commission rule that would otherwise apply; and
- (C) Consistent with federal law.

(b) As a part of the approval process, the director shall provide for public notice and for public participation in considering requests under this section.

(c) The director’s order must provide a specific description of the alternative method and must condition any approval on compliance with the method as the order prescribes.

(d) The department may establish a reasonable fee for applications under this section.

(e) A violation of an order issued under this section is punishable as if it were a violation of the previously effective means of compliance.

History. Acts 1999, No. 500, § 1.

CHAPTER 12

NATURAL RESOURCES DAMAGES TRUST FUND ACT

SECTION.	SECTION.
8-12-101. Title.	8-12-105. Duties of the Department of
8-12-102. Definitions.	Finance and Administra-
8-12-103. Natural Resources Damages	tion.
Trust Fund.	
8-12-104. Natural Resources Damages	
Advisory Board.	

8-12-101. Title.

This chapter may be known and may be cited as the “Natural Resources Damages Trust Fund Act”.

History. Acts 1999, No. 895, § 1.

8-12-102. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) “Board” means the Natural Resources Damages Advisory Board;
- (2) “Fund” means the Natural Resources Damages Trust Fund created by this chapter; and
- (3) “Natural resources” means land, fish, wildlife, biota, air, surface water, groundwater, drinking water supplies, and other such resources

belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the State of Arkansas or local government.

History. Acts 1999, No. 895, § 1.

8-12-103. Natural Resources Damages Trust Fund.

(a)(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the “Natural Resources Damages Trust Fund”.

(2) In addition to all moneys appropriated by the General Assembly to the fund, there shall be deposited into the fund all payments collected by the state for restoration, rehabilitation, replacement, or acquisition of natural resources, any moneys received by the state as a gift or donation to the fund or any federal moneys designated to enter the fund, and all interest earned upon moneys deposited into the fund.

(3) All moneys received into the fund shall be utilized for natural resource restoration, rehabilitation, replacement, or acquisition.

(b) All expenditures from the fund shall be authorized by the Natural Resources Damages Advisory Board according to the provisions of this chapter and the requirements or conditions of any orders, settlement agreements, gifts, or donations.

History. Acts 1999, No. 895, § 1.

Cross References. Natural Resources Damages Trust Fund, § 19-5-1107.

8-12-104. Natural Resources Damages Advisory Board.

(a) There is hereby created and established a Natural Resources Damages Advisory Board.

(b) The board shall be composed of seven (7) members:

(1) One (1) member shall be a representative from the Arkansas Farm Bureau Federation;

(2) One (1) member shall be a representative from the Arkansas Natural Resources Commission;

(3) One (1) member shall be a representative from the Arkansas Forestry Commission;

(4) One (1) member shall be a representative from the Arkansas Department of Environmental Quality;

(5) One (1) member shall be a representative from the Arkansas State Game and Fish Commission;

(6) One (1) member shall be a representative of the Department of Arkansas Heritage; and

(7) One (1) member shall be a representative of the Attorney General's office.

(c) Members of the board shall serve without compensation.

(d) The board shall have the following powers and duties:

(1) To develop projects for the restoration, rehabilitation, replacement, and acquisition of natural resources;

- (2) To request proposals for natural resource-related projects;
- (3) To review and evaluate proposals for natural resource-related projects;
- (4) To select projects for the restoration, rehabilitation, replacement, and acquisition of natural resources; and
- (5) To approve payments from the Natural Resources Damages Trust Fund for projects and other activities relating to the restoration, rehabilitation, replacement, and acquisition of natural resources.

History. Acts 1999, No. 895, § 1.

8-12-105. Duties of the Department of Finance and Administration.

- (a) The Department of Finance and Administration shall administer the Natural Resources Damages Trust Fund, as authorized by the Natural Resources Damages Advisory Board.
- (b) The department shall undertake the following activities, as authorized by the board:
 - (1) Develop and issue requests for proposals;
 - (2) Award grants for projects relating to natural resource restoration, rehabilitation, replacement, and acquisition;
 - (3) Contract for services; and
 - (4) Make payments from the fund.

History. Acts 1999, No. 895, § 1.

CHAPTER 13
MANAGEMENT ORGANIZATION

- SECTION.
- 8-13-101. Purpose.
 - 8-13-102. Authority to adopt alternative organization.

- SECTION.
- 8-13-103. Requirements for comprehensive analysis and strategic planning.

Cross References. Arkansas Department of Environmental Quality, § 25-14-101.

Effective Dates. Acts 1999, No. 1316, § 5: Apr. 12, 1999. Emergency clause provided: “It is hereby found and determined by the General Assembly that it is vital that a management process be executed to improve our ability to protect and enhance the environment through the development and use of measurable environmental indicators. Therefore, an emergency is

declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and veto is overridden, it shall become effective on the date the last house overrides the veto.”

8-13-101. Purpose.

It is recognized that:

(1) The improvement of the environment and the management of environmental concerns within the State of Arkansas are matters of interest to all citizens of this state;

(2) Environmental protection and improvement could be enhanced by authorizing the Director of the Arkansas Department of Environmental Quality to design and establish a management organization which incorporates specific goals for environmental protection and uses environmental indicators to measure agency performance; and

(3) The director should execute a management process which:

(A) Creates an integrated agency information system;

(B) Organizes the Arkansas Department of Environmental Quality according to business function;

(C) Utilizes environmental indicators to measure progress in protecting and enhancing the environment;

(D) Employs a collaborative public involvement process to define the environmental indicators to be used to measure environmental enhancement; and

(E) Establishes a performance-based financial management system that links the funding of agency activities to environmental results.

History. Acts 1999, No. 1316, § 1.

8-13-102. Authority to adopt alternative organization.

(a) The Director of the Arkansas Department of Environmental Quality, with the advice and consent of the Governor, may establish any number of divisions for the conduct of environmental affairs of the state and may prescribe the functions and duties of each division.

(b) Provided, however, that:

(1) All functions and duties prescribed by a grant agreement with an entity of the United States Government shall be maintained for the duration of the grant agreement;

(2)(A) This section does not limit any provision of state law directing or requiring the Arkansas Department of Environmental Quality to carry out any function or provide any service.

(B) However, nothing in this section shall be construed to prevent the reassignment of functions or services assigned by state law where reassignment does not alter the obligation of the department to continue providing such function or service;

(3) Such reorganization shall be based on a comprehensive analysis of all of the functions and duties administered by the department and the development of a ten-year strategic plan of department operations; and

(4) The conduct of such comprehensive analysis and the development of a strategic plan shall be financed by an appropriation or authorization of the General Assembly for these specific purposes.

History. Acts 1999, No. 1316, § 1.

8-13-103. Requirements for comprehensive analysis and strategic planning.

(a) Any reorganization of the functions and duties for the conduct of environmental affairs through the provisions of this chapter shall be based on a comprehensive analysis of the existing operations of the Arkansas Department of Environmental Quality and the development of a ten-year strategic plan for department operations. Such strategic plan shall be reviewed and updated on an annual basis and shall be made available for public review through formal notice.

(b) The comprehensive analysis of each division, function, and duty shall consist of the following requirements:

(1) A comprehensive analysis of each existing division, function, and duty performed by the department in providing environmental services; and

(2) A comprehensive comparative analysis of the functions and duties to be performed through the proposed alternative organization with regard to improved efficiency, effectiveness, responsiveness, and accountability to the people.

(c)(1) The strategic plan shall outline a management organization for the department that promotes environmental protection and enhancement.

(2) Such management organization shall consist of the following requirements:

(A) To establish an integrated agency information system that:

(i) Ensures compatibility between state standards and facility identification and location data standards established by the United States Environmental Protection Agency;

(ii) Reduces reporting and record-keeping burdens on industry;

(iii) Establishes a public participation process to define and adopt reporting and data management reforms;

(iv) Measures improvements in waste reduction recycling of waste materials, conservation and reuse of resources, and pollution prevention; and

(v) Expands public access to environmental performance information;

(B)(i) To institute environmental performance indicators to measure progress in protecting and enhancing the environment.

(ii) Such indicators shall emphasize waste reduction, recycling of waste materials, conservation and reuse of materials, and pollution prevention, and shall be formulated using numeric goals and expressed in plain language terms.

(iii) Such indicators shall be developed by a work group appointed by the Director of the Arkansas Department of Environmental Quality consisting of representatives of the department working in collaboration with representatives from state and federal agencies, city and county officials, nonprofit organizations, minority groups,

industry, colleges and universities, civic groups, and other stakeholders in environmental affairs;

(C) To organize the department according to business functions and duties;

(D) To establish a performance-based financial management system that links expenditures within divisions, functions, and duties to environmental protection and enhancement; and

(E) To embody the above elements into a reorganization plan which provides for the scheduling of any transfer of functions and duties, acquisition of equipment, development of procedures, programming, records, documents, properties, assets, funds, liabilities, and bonding resulting from the proposed changes.

History. Acts 1999, No. 1316, § 1.

CHAPTER 14
SHIELDED OUTDOOR LIGHTING ACT

SECTION.

8-14-101. Title.

8-14-102. Purpose.

8-14-103. Definitions.

8-14-104. Shielding — Prohibitions —
Exemptions.

SECTION.

8-14-105. Penalties.

8-14-106. Enforcement.

8-14-107. Provisions supplemental.

8-14-101. Title.

This chapter shall be known and may be cited as the “Shielded Outdoor Lighting Act”.

History. Acts 2005, No. 1963, § 1.

8-14-102. Purpose.

The purpose of this chapter is to conserve energy and preserve the environment through the regulation of outdoor lighting fixtures.

History. Acts 2005, No. 1963, § 1.

8-14-103. Definitions.

As used in this chapter:

(1) “Outdoor lighting fixture” means an automatically controlled, outdoor artificial illuminating device, whether permanent or portable, used for illumination or advertisement, including searchlights, spotlights, and floodlights, whether for architectural lighting, parking lot lighting, landscape lighting, billboards, or street lighting; and

(2) “Shielded” means a fixture that is covered in a manner that light rays emitted by the fixture, either directly from the lamp or indirectly from the fixture, are projected below a horizontal plane running through the lowest point on the fixture where light is emitted.

History. Acts 2005, No. 1963, § 1.

8-14-104. Shielding — Prohibitions — Exemptions.

(a) After January 1, 2006:

(1)(A) No public funds shall be used to install an outdoor lighting fixture unless it is shielded.

(B) Subdivision (a)(1)(A) of this section shall not apply to any municipality or county if the governing body of the municipality or county determines by ordinance or to a municipally owned utility if the municipal employee responsible for procurement determines that the cost of acquiring a shielded outdoor lighting fixture will be prohibitive after comparing:

(i) The cost of the fixtures; and

(ii) The projected energy cost of the operation of the fixtures;

(2) The Arkansas Department of Environmental Quality shall promulgate regulations prohibiting any person or entity from knowingly placing or disposing of the bulb or tube portion of an electric lighting device containing hazardous levels of mercury in a landfill after January 1, 2008, if:

(A) The electric lighting device contains more than two-tenths milligram per liter (0.2 mg/l) of leachable mercury as measured by the Toxicity Characteristic Leaching Procedure as set out in EPA Test Method 1311; and

(B) Adequate facilities exist for the public to properly dispose of the electric lighting device described in subdivision (a)(2)(A) of this section; and

(3)(A) Each electric public utility shall offer a shielded lighting service option.

(B) Not later than January 1, 2006, each electric public utility shall file an application with the Arkansas Public Service Commission to establish a schedule of rates and charges for the provision of a shielded lighting service option to the utility's customers.

(C) The commission shall require each electric public utility to inform its customers of the availability of the shielded lighting service.

(b) This chapter does not apply to acquisitions of:

(1) Incandescent outdoor lighting fixtures of one hundred fifty watts (150 W) or less or other light sources of seventy watts (70 W) or less;

(2) Outdoor lighting fixtures on advertisement signs on interstate or federal primary highways;

(3)(A) Outdoor lighting fixtures existing and legally installed before August 12, 2005.

(B) However, if an existing outdoor lighting fixture exempted from this chapter under subdivision (b)(3)(A) of this section needs to be replaced, the acquisition of the replacement outdoor lighting fixture shall be subject to the provisions of this chapter;

(4) Navigational lighting systems at airports or other lighting necessary for aircraft safety; and

(5) Outdoor lighting fixtures that are necessary for worker safety at farms, ranches, dairies, or feedlots or industrial, mining, or oil and gas facilities.

(c) This chapter does not apply to outdoor lighting fixtures maintained or installed by:

- (1) A public school district;
- (2) A correctional facility;
- (3) A juvenile detention facility;
- (4) An adult detention facility;
- (5) A mental health facility; or
- (6) A state-supported institution of higher education.

History. Acts 2005, No. 1963, § 1; 2006 § 1; 2007, No. 452, § 1; 2007, No. 470, (1st Ex. Sess.), No. 11, § 1; 2007, No. 124, § 1.

8-14-105. Penalties.

Violations of this chapter are punishable by:

- (1) A warning for a first offense; and
- (2) A fine of twenty-five dollars (\$25.00) minus the replacement cost for each offending outdoor lighting fixture for a second or subsequent offense or for an offense that continues for thirty (30) calendar days from the date of the warning.

History. Acts 2005, No. 1963, § 1.

8-14-106. Enforcement.

This chapter may be enforced by a town, city, or county of this state by seeking injunctive relief in a court of competent jurisdiction.

History. Acts 2005, No. 1963, § 1.

8-14-107. Provisions supplemental.

The provisions of this chapter are cumulative and supplemental and shall not apply within a town, city, or county of this state that by ordinance has adopted provisions restricting light pollution that are equal to or more stringent than the provisions of this chapter.

History. Acts 2005, No. 1963, § 1.

CHAPTER 15

PROPERTY ASSESSED CLEAN ENERGY ACT

SECTION.

8-15-101. Title.

8-15-102. Definitions.

8-15-103. Legislative findings.

8-15-104. Immunity.

8-15-105. Authority to create.

SECTION.

8-15-106. Membership in an existing district.

8-15-107. Board of directors.

8-15-108. Membership on the board of directors.

- SECTION.
8-15-109. Terms of directors.
8-15-110. District boards of directors — Meetings.
8-15-111. District boards of directors — Powers and duties.
8-15-112. Reporting requirement — Collection of assessments.
8-15-113. Financing projects.

- SECTION.
8-15-114. Program guidelines.
8-15-115. Payment by special assessments.
8-15-116. Bonds.
8-15-117. Sale.
8-15-118. Revolving fund.
8-15-119. Notice to mortgage lender.

8-15-101. Title.

This chapter shall be known and may be cited as the “Property Assessed Clean Energy Act”.

History. Acts 2013, No. 1074, § 1.

8-15-102. Definitions.

As used in this chapter:

- (1)(A) “Bond” means a revenue bond or note issued under this chapter.
- (B) “Bond” includes any other financial obligation authorized by this chapter, the laws of this state, or the Arkansas Constitution;
- (2) “District” means a property assessed energy improvement district established in this state by law for the express purpose of managing the PACE program;
- (3) “Governmental entity” means a municipality, county, combination of cities or counties or both, or statewide district;
- (4) “Owner” means an individual, partnership, association, corporation, or other legal entity that is recognized by law and has title or interest in any real property;
- (5) “PACE program” means a property assessed clean energy program under which a real property owner can finance an energy efficiency improvement, a renewable energy project, and a water conservation improvement on the real property; and
- (6) “Person” means an individual, partnership, association, corporation, or other legal entity recognized by law as having the power to contract.

History. Acts 2013, No. 1074, § 1.

8-15-103. Legislative findings.

The General Assembly finds that:

- (1) It is in the best interests of the state to authorize property assessed energy improvement districts that make available to citizens one (1) or more financing programs, including without limitation a PACE program, to fund energy efficiency improvements, renewable energy projects, and water conservation improvements on residential, commercial, industrial, and other real properties at the request of the owner;

(2) The programs described in subdivision (1) of this section will benefit the citizens of this state by:

(A) Decreasing the cost of providing funds to participating citizens and lowering the aggregate issuance and servicing costs of loans; and

(B) Making funds available to rural communities throughout the state that might not otherwise create and finance the programs described in subdivision (1) of this section; and

(3) The programs described in subdivision (1) of this section will further the public purpose of:

(A) Creating jobs and stimulating the state's economy;

(B) Generating significant economic development through the investment of the proceeds of loans in local communities, including increased sales tax revenue;

(C) Protecting participating citizens from the financial impact of the rising cost of electricity produced from nonrenewable fuels;

(D) Providing positive cash flow in which the costs of the improvements are lower than the energy savings on an average monthly basis;

(E) Providing the citizens of this state with informed choices and additional options for financing improvements that may not otherwise be available;

(F) Increasing the value of the improved real property for participating citizens;

(G) Improving the state's air quality and conserving natural resources, including water;

(H) Attracting manufacturing facilities and related jobs to the state; and

(I) Promoting energy independence and security for the state and the nation.

History. Acts 2013, No. 1074, § 1.

8-15-104. Immunity.

(a) The powers and duties of a property assessed energy improvement district conferred by this chapter are public and governmental functions exercised for a public purpose and for matters of public necessity.

(b) The district and its personnel are immune from suit in tort for the performance of its duties under this chapter unless immunity from tort is expressly waived in writing.

History. Acts 2013, No. 1074, § 1.

8-15-105. Authority to create.

(a) A governmental entity legally authorized to issue general revenue bonds may create a property assessed energy improvement district by adoption of an ordinance.

(b) A combination of governmental entities may create a district by each governmental entity:

(1) Adopting an ordinance that provides for the governmental entity's participation in the district; and

(2) Entering into a joint agreement with one (1) or more other participating governmental entities.

(c) This section shall not limit additional governmental entities from becoming members of the district under § 8-15-106.

History. Acts 2013, No. 1074, § 1.

8-15-106. Membership in an existing district.

(a) To become a member of an existing property assessed energy improvement district, the governing body of a governmental entity shall:

(1) Adopt an ordinance that provides for the participation of the governmental entity in the district; and

(2) Enter into an agreement with the other participating members of the district.

(b) The agreement between members of a district shall establish the terms and conditions of the operation of the district with the limitations provided in this chapter.

History. Acts 2013, No. 1074, § 1.

8-15-107. Board of directors.

(a) A property assessed energy improvement district created under this chapter shall be operated and controlled by a board of directors.

(b) The board of directors shall manage and control each district, including without limitation the operations, business, and affairs of the district.

(c) The board of directors shall be solely responsible for selecting the chair of the board of directors and establishing the procedures by which the board of directors shall operate.

(d) A director shall not receive compensation in any form for his or her services as a director.

(e) Each director shall be entitled to reimbursement by the district for any necessary expenditures incurred in connection with the performance of his or her general duties as a director.

History. Acts 2013, No. 1074, § 1.

8-15-108. Membership on the board of directors.

(a) The board of directors of a property assessed energy improvement district shall consist of at least seven (7) directors.

(b) The board of directors shall include:

(1) For a statewide district, the members specified in the agreement establishing the district;

(2) For a district composed of a combination of one (1) or more counties and one (1) or more cities:

(A) The county judge or his or her designated representative of each county that is a member of the district;

(B) The mayor or his or her designated representative of each city that is a member of the district; and

(C) If the number of directors is fewer than seven (7) after fulfilling the requirements of subdivisions (b)(2)(A) and (B) of this section, additional members shall be appointed as specified in the agreement establishing the district until a total of seven (7) directors has been appointed;

(3) For a district composed of one (1) or more counties:

(A) The county judge or his or her designated representative of each county that is a member of the district; and

(B) If the number of directors is fewer than seven (7) after fulfilling the requirements of subdivision (b)(3)(A) of this section, additional members shall be appointed as specified in the agreement establishing the district until a total of seven (7) directors has been appointed; and

(4) For a district composed of one (1) or more cities:

(A) The mayor or his or her designated representative of each city that is a member of the district; and

(B) If the number of directors is fewer than seven (7) after fulfilling the requirements of subdivision (b)(4)(A) of this section, additional members shall be appointed as specified in the agreement establishing the district until a total of seven (7) directors has been appointed.

(c) The designated representative of a county judge or mayor under subsection (b) of this section shall be a qualified elector of the jurisdiction that the designated representative is appointed to represent.

History. Acts 2013, No. 1074, § 1.

8-15-109. Terms of directors.

(a) A director who is a public official may serve on the board of directors of a property assessed energy improvement district during his or her term of office as the county judge or mayor of a member of the district.

(b) A director who is the designated representative of the mayor or county judge of a member of a district serves at the pleasure of the mayor of the city or the county judge of the county that is a member of the district.

History. Acts 2013, No. 1074, § 1; substituted “the” for “a” preceding “district” in (a); and substituted “a” for “the” in 2015, No. 1162, § 2.

Amendments. The 2015 amendment preceding “district serves” in (b).

8-15-110. District boards of directors — Meetings.

(a) The board of directors of a property assessed energy improvement district shall hold quarterly meetings and special meetings, as needed, in a courthouse or other location within the district.

(b) The time and place of the quarterly meetings shall be on file in the office of the district board of directors.

History. Acts 2013, No. 1074, § 1; substituted “a” for “the” preceding “court-
house” in (a). 2015, No. 1162, § 3.

Amendments. The 2015 amendment

8-15-111. District boards of directors — Powers and duties.

(a) The board of directors of a property assessed energy improvement district may:

- (1) Issue revenue bonds on behalf of the district;
- (2) Make and adopt all necessary bylaws for its organization and operation;
- (3) Elect officers and employ personnel necessary for its operation;
- (4) Operate, maintain, expand, and fund a PACE project;
- (5) Apply for, receive, and spend grants for any purpose under this chapter;
- (6) Enter into agreements and contracts on behalf of the district;
- (7) Receive property or funds by gift or donation for the finance and support of the district;
- (8) Reimburse a governmental entity for expenses incurred in performing a service for the district;
- (9) Assign assessments to a private lending institution; and
- (10) Do all things necessary or appropriate to carry out the powers expressly granted or duties expressly imposed under this chapter.

(b) The board of directors shall:

- (1) Allow a commission of:
 - (A) One and five-tenths percent (1.5%) for the extension of district assessments by the county assessor or county clerk;
 - (B) One and five-tenths percent (1.5%) for the collection of district assessments by the county collector; and
 - (C) One-eighth of one percent (0.125%) for services of a county treasurer in disbursing the moneys collected for district assessments; and
- (2) Adopt rules consistent with this chapter or with other legislation that in its judgment may be necessary for the proper enforcement of this chapter.

History. Acts 2013, No. 1074, § 1.

8-15-112. Reporting requirement — Collection of assessments.

(a)(1)(A) By March 1 of each year or upon the creation of a property assessed energy improvement district that uses or intends to use the

county collector for collection of district assessments, a district shall file an annual report with the county clerk in any county in which a portion of the district is located.

(B) The annual report required under this section shall be available for inspection and copying by assessed landowners in the district.

(C) The county clerk shall not charge any costs or fees for filing the annual report required under this section.

(D) The district shall deliver a filed copy of the annual report required under this section to the county collector within five (5) days of filing.

(2) The annual report required under this section shall contain the following information as of December 31 of the current calendar year:

(A) A list of contracts, identity of the parties to the contracts, and obligations of the district;

(B) Any indebtedness, including bonded indebtedness, and the reason for the indebtedness, including the following:

(i) The stated payout or maturity date of the indebtedness, if any; and

(ii) The total existing delinquent assessments and the party responsible for the collection;

(C) Identification of each member of the board of directors of the district and each member's contact information;

(D) The date, time, and location for any scheduled meeting of the district for the following year;

(E) The contact information for the district assessor;

(F) Information concerning to whom the county treasurer is to pay district assessments;

(G) An explanation of the applicable statutory penalties, interest, and costs;

(H) The method used to compute district assessments; and

(I) A statement itemizing the income and expenditures of the district, including a statement of fund and account activity for the district.

(b)(1) A district that does not comply with subsection (a) of this section commits a violation punishable by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense.

(2) A fine recovered under subdivision (b)(1) of this section shall be deposited into the county clerk's cost fund.

(c)(1) On or before December 31, a district shall file its list of special assessments for the following calendar year with the county clerk.

(2)(A) After filing the list of special assessments under subdivision (c)(1) of this section, the district shall deliver a copy of the filed list of special assessments to the preparer of the tax books.

(B) If the county collector is not the designated preparer of the tax books, the district shall deliver a copy of the filed list of special assessments to the county collector.

arrangement among the consenting real property owners and the governmental entity;

(C) A minimum and maximum aggregate dollar amount that may be financed per property;

(D)(i) A method for prioritizing requests from real property owners for financing if the requests appear likely to exceed the authorization amount of the loan program.

(ii) Priority shall be given to those requests from real property owners that meet the eligibility requirements on a first-come, first-served basis;

(E) Identification of a local official authorized to enter into loan contracts on behalf of the district; and

(F) A draft contract specifying the terms and conditions proposed by the district.

(c)(1) The district may combine the loan payment required by the loan contract with the billing for the real property tax assessment for the real property where the renewable energy project, water conservation improvement, or the energy efficiency improvement is installed.

(2) The district may establish the order in which a loan payment will be applied to the different charges.

(3) The district may not combine the billing for a loan payment required by a contract authorized under this section with a billing of another county or political subdivision unless the county or political subdivision has given its consent by a resolution or ordinance.

(d) The district shall offer private lending institutions the opportunity to participate in local loan programs established under this section.

(e)(1)(A) In order to secure a loan authorized under this section, the district may place a lien equal in value to the loan against any real property where the renewable energy project, water conservation improvement, or the energy efficiency improvement is installed.

(B) The lien shall attach to the real property when it is filed in the county recorder's office for record.

(2)(A)(i) The priority of the lien created under this chapter is determined based on the date of filing of the lien.

(ii) Except as provided in subdivision (e)(2)(A)(iii) of this section, the priority of the lien shall be determined in the same manner as the priority for other real property tax and assessment liens.

(iii) A lien created under this chapter shall be subordinate to any real or personal property tax liens.

(iv) A district shall discharge the lien created under this chapter upon full payment of the lien.

(B) If the real property is sold, the lien shall stay attached to the real property, and the loan created under this chapter will be owed by the new real property owner.

(C) If the real property enters into default or foreclosure:

(i) Payment of the assessment shall not be sought from a member of the district who does not own the real property that entered into default or foreclosure;

(ii) Repayment of the assessment shall not be accelerated automatically; and

(iii) The balance of the assessment shall be repaid according to the terms of the agreed-upon schedule.

(3) The district may bundle or package the loans for transfer to private lenders in a manner that would allow the liens to remain in full force to secure the loans.

(f)(1) Before the enactment of an ordinance under this section, a public hearing shall be held at which interested persons may object to or inquire about the proposed loan program or any of its particulars.

(2) The public hearing shall be advertised one (1) time per week for two (2) consecutive weeks in a newspaper of general circulation in the district.

History. Acts 2013, No. 1074, § 1.

8-15-114. Program guidelines.

The board of directors of a property assessed energy improvement district, together with any third-party administrator it may select, shall determine:

(1) The guidelines of the PACE program, including without limitation that:

(A) The base energy performance evaluation shall be completed by a certified and qualified energy evaluation professional to determine existing energy use and options for improved energy efficiency;

(B) The approved improvements create a positive cash flow;

(C) Work shall be performed by qualified and certified contractors in the field of energy efficiency and methods of renewable energy installation;

(D) Performance testing and verification shall be performed by a qualified professional after the work is completed;

(E) Adequate consumer protections are in place; and

(F) The applicable underwriting standards for the participants in the program are established;

(2) The qualifications of the vendors performing installations under this chapter;

(3) The mechanisms by which the district will remit the received special assessment payments and any cost reimbursement; and

(4) Any other matters necessary to implement and administer the program.

History. Acts 2013, No. 1074, § 1; 2015, No. 1162, § 6. inserted “of a district” in the introductory language.

Amendments. The 2015 amendment

8-15-115. Payment by special assessments.

The credit and taxing power of the State of Arkansas shall not be pledged for the debt evidenced by the bonds, which are payable solely from the revenues received from the special assessments on the participants' real property under this chapter.

History. Acts 2013, No. 1074, § 1; substituted "shall" for "will" preceding 2015, No. 1162, § 7. "not be" and substituted "are" for "will be"

Amendments. The 2015 amendment preceding "payable".

8-15-116. Bonds.

(a) A property assessed energy improvement district may:

(1) Issue bonds to provide the PACE program loans authorized by this chapter; and

(2) Create a debt reserve fund of legally available moneys from nonstate sources as partial security for the bonds.

(b) Bonds issued under this chapter and income from the bonds, including any profit made on the sale or transfer of the bonds, are exempt from taxation in this state.

(c) Bonds issued under this chapter shall:

(1)(A) Be authorized by a resolution of the board of directors of a district.

(B) The authorizing bond resolution may contain any terms, covenants, and conditions that the board deems to be reasonable and desirable; and

(2) Have all of the qualities of and shall be deemed to be negotiable instruments under the laws of the State of Arkansas.

History. Acts 2013, No. 1074, § 1; 2015, No. 1162, § 8. **Amendments.** The 2015 amendment added "of a district" to the end of (c)(1)(A).

8-15-117. Sale.

The bonds may be sold in such a manner, either at public or private sale, and upon such terms as the board of directors of a property assessed energy improvement district shall determine to be reasonable and expedient for effectuating the purposes of this chapter.

History. Acts 2013, No. 1074, § 1.

8-15-118. Revolving fund.

(a) A property assessed energy improvement district may maintain a revolving fund to be held in trust by a banking institution chosen by the board of directors of the district separate from any other funds and administered by the board.

(b) A district may transfer into its revolving fund money from any permissible source, including:

(1) Bond revenues;

(2) Contributions; and

(3) Loans.

History. Acts 2013, No. 1074, § 1; inserted “of the district” following “directors” twice in (a).
2015, No. 1162, § 9.

Amendments. The 2015 amendment

8-15-119. Notice to mortgage lender.

At least thirty (30) days before the execution of an agreement with a property assessed energy improvement district, an owner shall provide written notice to each mortgage lender holding a lien on the owner’s property of the owner’s application to participate in a PACE program.

History. Acts 2013, No. 1074, § 1.

Index to Title 8

A

ABANDONED PROPERTY.

Litter control.

- Definition of abandoned, §8-6-403.
- Junk cars, old tires or abandoned household appliances.
- Authority to take possession of discarded items.
- Notice, §8-6-413.
- Discarding in certain places prohibited, §8-6-408.
- Notification to owners and lienholders.
- Reclamation, §8-6-414.
- Sale, §8-6-415.
 - Disposition of proceeds of sale to litter control account, §8-6-416.

ACCIDENTS.

Hazardous waste management.

- Civil liability of those assisting at accidents, §8-7-101.

ACTIONS.

Environmental audit reports.

- Partial disclosure, §8-1-311.
- Required disclosures of privileged information, §8-1-307.

Hazardous waste management.

- Department.
- Powers, §8-7-209.
- Enforcement of provisions, §8-7-204.
- Private right of action, §8-7-206.

Pollution.

- Air pollution.
 - Private rights unchanged, §8-4-307.
- Chronic noncompliance, §8-5-702.
- Public nuisance actions.
 - Prosecution, §8-4-107.

Public employees' chemical right to know.

- Civil action for enforcement of rights, §8-7-1015.

Solid waste management.

- Private right of action not obviated by subchapter, §8-6-206.
- Violation of subchapter.
 - Private right of action, §8-6-206.

ADVERTISING.

Outdoor lighting.

- Shielded outdoor lighting, §§8-14-101 to 8-14-107.

AGRICULTURE.

Pesticides.

- Abandoned agricultural pesticide disposal, §§8-7-1201 to 8-7-1206.

Voluntary clean-up of abandoned sites, §§8-7-1101 to 8-7-1104.

AIR POLLUTION.

Actions.

- Private rights unchanged, §8-4-307.

Air contaminants.

- Defined, §8-4-303.
- Prohibited acts, §8-4-310.

Air quality areas.

- Designation, §8-3-101.

Ambient air quality standards, §8-3-102.

- Hydrogen sulfide emissions, §8-3-103.

Appeals.

- Applicability of water pollution provisions, §8-4-304.

Applicability of provisions.

- Exceptions to applicability, §8-4-305.
- Water pollution provisions, §8-4-304.

Burning of storm debris, §8-4-316.

Citation of act, §8-4-101.

Commission.

- Defined, §8-4-303.
- Employer-employee relationships.
 - No authority of commission over relationships, §8-4-309.
- Powers, §8-4-311.

- Factors in exercise, §8-4-312.

Compliance advisory panel, §8-4-314.

Construction and interpretation.

- Limitation on construction of provisions, §8-4-309.
- Political subdivisions.
- Preemption.
 - Construction not to prevent private action, §8-4-306.

Counties.

- Prohibition on legislating on air pollution, §8-4-306.

Criminal offenses, §8-4-103.

- Disclosure of industrial secrets, §8-4-308.

AIR POLLUTION —Cont'd**Criminal offenses —Cont'd**

Violation of commission rules,
§8-4-310.

Definitions, §§8-4-102, 8-4-303.**Department of environmental quality.**

Employer-employee relationships.

No authority of department over
relationships, §8-4-309.

Emission data, §8-4-308.**Emission plans, §§8-3-201 to 8-3-208.**

Appeal of final decision on public
comment and notice, §8-3-204.

Assessment of effects of state plan,
§8-3-205.

Rate increases for customers,
evaluation effect on, §8-3-208.

Definitions, §8-3-202.

Final adoption of federal guidelines as
precondition of approval of state
plan, §8-3-203.

Governor direction for submission to
EPA in absence of legislative
approval, §8-3-207.

Increase in utility bills for customers
as effect of plan.

Revision, §8-3-208.

Legislative findings, §8-3-201.

Notice and comment requirements on
proposed plan, §8-3-204.

Purpose of provisions, §8-3-201.

Report required prior to petition to
initiate rulemaking, §8-3-205.

State plan as preferred method of
compliance with federal
guidelines, §8-3-203.

Submission of state plan to legislative
council, §8-3-207.

Submission of state plan to US
Environmental Protection Agency,
restrictions, §8-3-206.

Employer-employee relationships.

No authority of commission or
department over relationships,
§8-4-309.

Exceptions to provisions, §8-4-304.**Hydrogen sulfide emissions, §8-3-103.****Incorporation of water pollution provisions by reference, §8-4-304.****Injunctions, §8-4-103.****Jurisdiction.**

Political subdivisions forbidden to
legislate on air pollution, §8-4-306.

Labor.

No authority of commission or
department over
employer-employee relationships,
§8-4-309.

AIR POLLUTION —Cont'd**Legislative intent, §8-4-301.****Local governments.**

Prohibition on legislating on air
pollution, §8-4-306.

Misdemeanors, §8-4-103.**Motor vehicle racing facilities,
§8-10-302.****Municipal corporations.**

Political subdivisions forbidden to
legislate on air pollution, §8-4-306.

National ambient air quality standards.

Implementation, §8-4-318.

Orders.

Applicability of water pollution
provisions, §8-4-304.

Penalties, §8-4-103.**Permits.**

Applicability of water pollution
provisions, §8-4-304.

Authority of department, §8-4-315.

Policy, §8-4-301.**Political subdivisions.**

Prohibition on legislating on air
pollution, §8-4-306.

Prohibited acts, §8-4-310.**Purpose of provisions, §8-4-302.****Radiation protection law not
amended or repealed, §8-4-309.****Rules and regulations.**

Prohibited acts, §8-4-310.

Variances from regulations, §8-4-313.

Safeguarding air resources.

Purpose of subchapter, §8-4-302.

**State emission plans, §§8-3-201 to
8-3-208.****State implementation plans.**

Developing, §8-4-317.

Implementing, §8-4-317.

NAAQS implementation, §8-4-318.

Powers of commission, §8-4-311.

State policy, §8-4-301.**Trade secrets, §8-4-308.****Variances from regulations, §8-4-313.****Violations of provisions.**

Applicability of water pollution
provisions, §8-4-304.

**Water pollution provisions
applicable, §8-4-304.****ANIMALS.****Solid waste management, §8-6-1801.****Waste disposal, §8-6-1801.**

Water pollution, permits.

Liquid animal waste management
system, §8-4-203.

APPEALS.**Air pollution.**

Emission plans.

Appeal of final decision on public comment and notice, §8-3-204.

Environmental laboratory accreditation.

Procedure, §8-2-205.

Hazardous substance emergencies.

Remedial action trust fund.

Applicable provisions, §8-7-519.

Final orders.

Appeals from, §8-7-519.

Hazardous waste management.

Enforcement of subchapter, §8-7-204.

Resource reclamation.

Applicable provisions, §8-7-309.

Petroleum products tanks.

Storage tank trust fund, §8-7-905.

Pollution.

Air pollution.

Applicability of water pollution provisions, §8-4-304.

Permits.

Denial of application, §8-1-106.

Water pollution.

Commission.

Final orders, rules or regulations.

Entitlement, §8-4-222.

Notice of appeal required, §8-4-223.

Parties to the appeal, §8-4-224.

Proceedings.

Presumptions, §8-4-229.

Notice of appeal.

Return by commission.

Requirements, §8-4-226.

Review by court, §8-4-227.

Stay of proceedings.

General requirements, §8-4-228.

Venue.

Change of venue, §8-4-225.

Public employees' chemical right to know.

Action to enforce rights, §8-7-1015.

APPLIANCES.**Litter control.**

Junk cars, old tires or abandoned household appliances.

Authority to take possession of discarded items.

Notice, §8-6-413.

Discarding in certain places prohibited, §8-6-408.

Notification to owners and lienholders.

Reclamation, §8-6-414.

APPLIANCES —Cont'd**Litter control —Cont'd**

Junk cars, old tires or abandoned household appliances —Cont'd

Sale, §8-6-415.

Disposition of proceeds of sale to litter control account, §8-6-416.

APPRENTICESHIP.**Sanitary landfills.**

Operators-in-training.

License, §8-6-908.

APPROPRIATIONS.**Environmental compact.**

Exceptions, §8-8-103.

Supplementary agreement appropriations, §8-8-103.

Hazardous substance emergencies.

Remedial action trust fund, §8-7-525.

ASSIGNMENTS.**Wastewater privatization.**

Contracts and service agreements, §8-5-608.

ATTORNEY-CLIENT PRIVILEGE.**Environmental audit reports,**

§8-1-312.

ATTORNEYS' FEES.**Public employees' chemical right to know.**

Action to enforce rights, §8-7-1015.

AUDITS AND AUDITORS.**Environmental audit reports,**

§§8-1-301 to 8-1-312.

Pollution.

Environmental audit reports, §§8-1-301 to 8-1-312.

B**BATTERIES.**

Disposal, §8-10-301.

Recycling, §8-9-301.

Sale prohibitions, §8-10-301.

BEVERAGES.**Litter control.**

Transporting foodstuffs or beverages on navigable waterway, §8-6-418.

BIDS AND BIDDING.**Wastewater privatization.**

Privatization contracts, service agreements, etc.

Exemptions from bidding requirements, §8-5-609.

BOARDS AND COMMISSIONS.**Solid waste management.**

Regional planning districts and boards, §§8-6-701 to 8-6-724.

BOND ISSUES.**Property assessed clean energy (PACE) program.**

Assessments, payment of bonds, §8-15-115.

Financing projects, §8-15-113.

Issuance, §8-15-116.

Sale, §8-15-117.

Wastewater privatization.

Industrial facilities.

Projects as industrial facilities for certain purposes, §8-5-612.

BONDS, SURETY.**Petroleum products tanks.**

Underground storage tanks.

Installation and testing licenses, §8-7-805.

Underground storage tanks.

Petroleum products.

Installation and testing licenses, §8-7-805.

Water pollution.

Permits.

Financial assurance of applicants, §8-4-203.

BROWNFIELDS REVITALIZATION SITE ASSESSMENT.**Phase I environmental site assessment consultants.**

List maintained by department of environmental quality, §§8-7-1301 to 8-7-1304, 8-7-1311.

BURDEN OF PROOF.**Environmental audit privilege, §8-1-310.****BURNING.****Open burning, §§8-6-1701 to 8-6-1704.**

Storm debris, §8-4-316.

Storm debris.

County government disposal of storm debris, §8-4-316.

C**CARBON DIOXIDE EMISSIONS.****Air pollution.**

Emission plans, §§8-3-201 to 8-3-208.

CEASE AND DESIST ORDERS.**Public employees' chemical right to know.**

Prima facie evidence of violation, §8-7-1014.

CHEMICALS.**Public employees' chemical right to know act, §§8-7-1001 to 8-7-1016.****CLAIMS.****Petroleum products.**

Storage tank fund.

Third party claims, §8-7-908.

CLEAN ENERGY.**Property assessed clean energy (PACE) program, §§8-15-101 to 8-15-119.****COLLEGES AND UNIVERSITIES.****Solid waste management.**

Recycling by governmental entities, §8-9-203.

Purchasing of recyclables by governmental entities, §8-9-204.

COMMERCIAL MEDICAL WASTE INCINERATION FACILITIES, §§8-6-1301 to 8-6-1307.**COMMERCIAL SITE VOLUNTARY CLEAN-UP.****Abandoned commercial sites, §§8-7-1101 to 8-7-1104.****COMPACTS.****Pollution.**

Interstate environmental compact, §§8-8-101 to 8-8-103.

Radiation protection.

Central interstate low-level radioactive waste compact, §§8-8-201 to 8-8-206.

COMPUTERS AND SOFTWARE.**Recycling and electronic solid waste.**

Computer and electronic recycling fund, §§8-6-613, 8-6-614.

CONFIDENTIALITY OF INFORMATION.**Environmental audit reports.**

Burden of proof of party asserting privilege, §8-1-310.

Creation of environmental audit privilege, §8-1-303.

Exceptions to privilege, §8-1-305.

Required disclosures in civil or administrative proceedings, §8-1-307.

Stipulation to waiver of privilege regarding certain information, §8-1-306.

Waiver of privilege, §8-1-304.

Petroleum products.

Tanks for petroleum products.

Department administration of subchapter, §8-7-909.

CONFIDENTIALITY OF**INFORMATION —Cont'd****Petroleum products —Cont'd**

Trade secrets.

Storage tanks of regulated substances.

Public officers and employees.

Violation of section constitutes misdemeanor, §8-7-811.

Pollution.

Air pollution.

Trade or industrial secrets, §8-4-308.

Water pollution.

Commission.

Information submitted, §8-4-207.

Trade secrets.

Petroleum products.

Storage tanks of regulated substances.

Public officers and employees.

Violation of section constitutes misdemeanor, §8-7-811.

CONFLICT OF LAWS.**Radiation protection.**

Low-level radioactive waste.

Compact provisions controlling, §8-7-604.

Solid waste management.

Recycling.

Conflict with federal laws, §8-9-103.

CONTEMPT.**Public employees' chemical right to know.**

Refusal to comply with court orders, §8-7-1015.

CONTRACTORS.**Controlled substances contaminated property cleanup.**

Contractor certification program, §8-7-1402.

CONTRACTS.**Solid waste management.**

Regional planning districts and boards.

Agreements implementing subchapter, §8-6-709.

Wastewater privatization.

Privatization contracts.

Assignment, §8-5-608.

Competitive bidding provisions inapplicable, §8-5-609.

Generally, §8-5-606.

Public service commission.

Exemption from jurisdiction of commission, §8-5-610.

Service agreements.

Assignments, §8-5-608.

CONTRACTS —Cont'd**Wastewater privatization —Cont'd**

Privatization contracts —Cont'd

Service agreements —Cont'd

Competitive bidding provisions inapplicable, §8-5-609.

Generally, §8-5-607.

Public service commission.

Exemption from jurisdiction of commission, §8-5-610.

Tax exemption on revenues, §8-5-611.

Service agreements, §8-5-607.

Assignments, §8-5-608.

Competitive bidding provisions inapplicable, §8-5-609.

Public service commission.

Exemption from jurisdiction of commission, §8-5-610.

Tax exemption on revenues, §8-5-611.

COUNTIES.**Disasters.**

Natural disasters.

Open burning of storm debris, §8-4-316.

Pollution.

Air pollution.

Prohibition on legislation on air pollution, §8-4-306.

Exceptions, §8-4-306.

Wastewater plant operators.

Unlawful acts, §8-5-203.

Wastewater privatization.

Local governments.

Defined, §8-5-603.

CRIMINAL ATTEMPT.**Litter control.**

Junk cars, old tires or abandoned household appliances.

Discarding in certain places prohibited, §8-6-408.

CRIMINAL LAW AND PROCEDURE.**Controlled substances.**

Contaminated property resulting from manufacture.

Notice of removal, residual contamination.

Failure to comply, unlawful entry, §8-7-1407.

Dumping.

Unlawful dumping, §8-6-506.

Environmental audit reports.

Effect of privilege, §8-1-309.

Hazardous waste management.

Act violations, §§8-7-204, 8-7-225.

CRIMINAL LAW AND PROCEDURE

—Cont'd

Hazardous waste management

—Cont'd

Remedial action trust fund, §§8-7-504, 8-7-511, 8-7-521.

Disclosure of trade secrets, §8-7-511.

Site access for remedial or removal action, §8-7-521.

Unlawful acts, §8-7-504.

Resource reclamation, §8-7-307.

Litter control.

Covering contents being hauled by commercial or for-hire hauler, §8-6-407.

Criminal offenses of littering and commercial littering, §8-6-406.

Glass containers.

Possession or use on navigable waterways, §8-6-418.

Petroleum products tanks.

Disclosure of confidential information, §8-7-909.

Disclosure of trade secrets, §8-7-811.

Pollution.

Nuisances.

Prosecution of public nuisance actions, §8-4-107.

Radiation protection.

Violation of radioactive waste compact, §8-8-201.

Recycling.

Theft of recyclable materials.

Regional recycling programs.

Unlawfully diverting recyclable materials under, §8-6-720.

Solid waste management.

Regional recycling programs.

Unlawfully diverting recyclable materials under, §8-6-720.

Regional regulatory violations, §8-6-722.

Violations of solid waste management act, §§8-6-204, 8-6-214.

Theft of recyclable materials.

Regional recycling programs.

Unlawfully diverting recyclable materials under, §8-6-720.

D**DAMAGES.****Hazardous substance emergencies.**

Remedial action trust fund.

Violations of provisions.

Punitive damages allowable, §8-7-517.

DAMAGES —Cont'd**Pollution.**

Chronic noncompliance, §8-5-702.

DEFINED TERMS.**Abandoned.**

Abandoned agricultural pesticide disposal, §8-7-1203.

Litter control, §8-6-403.

Abandoned site.

Voluntary clean-up, §8-7-1102.

Above-ground facility.

Low-level radioactive waste, §8-7-601.

Aboveground storage tank, §8-7-801.

Petroleum storage tank trust fund, §8-7-902.

Acceptable results.

Environmental testing, §8-2-203.

Accidental release.

Petroleum storage tank trust fund, §8-7-902.

Accreditation.

Environmental testing, §8-2-203.

Active life.

Solid waste disposal financial assurance, §8-6-1602.

Active portion.

Solid waste disposal financial assurance, §8-6-1602.

Adjacent property owner.

Regulated substance storage tanks, §8-7-801.

Administrative inspections.

Environmental law, §8-1-107.

Affiliated person.

Environmental law, §8-1-106.

Agricultural pesticide.

Abandoned agricultural pesticide disposal, §8-7-1203.

Air-cleaning device, §8-4-303.**Air contaminate, §8-4-303.****Air contamination, §8-4-303.****Air contamination source, §8-4-303.****Air pollution, §8-4-303.****Analyte.**

Environmental testing, §8-2-203.

Annual review fee.

Environmental law, §8-1-102.

Applicant.

Water pollution control facilities, §8-5-803.

Appropriate hydrogen sulfide control technology.

Air pollution, §8-3-103.

Area of the state.

Air pollution, §8-4-303.

Automobile repair shop.

Litter control, §8-6-403.

DEFINED TERMS —Cont'd**Beneficial use.**

Used tires, §8-9-402.

Bonds.

Property assessed clean energy (PACE) program, §8-15-102.

Regional solid waste management districts, §8-6-801.

Capture rate.

Mercury switch removal act, §8-9-603.

Chemical manufacturer.

Public employers' chemical right to know law, §8-7-1003.

Chronic noncompliance.

Sewage systems, §8-5-701.

Closure plan.

Solid waste disposal financial assurance, §8-6-1602.

Collection center.

Regional solid waste management, §8-6-702.

Commercial generator.

Used tires, §8-9-402.

Commercial littering, §8-6-403.**Commercial medical waste incineration facilities,** §8-6-1302.**Common sewage system.**

Chronic noncompliance, §8-5-701.

Compensatory damages.

Petroleum storage tank trust fund, §8-7-902.

Consulting laboratory.

Environmental testing, §8-2-203.

Contractor.

Abandoned agricultural pesticide disposal, §8-7-1203.

Control.

Medical waste incineration facilities, §8-6-1305.

Corporate ownership.

Medical waste incineration facilities, §8-6-1305.

Corrective action.

Petroleum storage tank trust fund, §8-7-902.

Costs.

Privatization projects, §8-5-603.

Regional solid waste management district, §8-6-801.

County solid waste collection and disposal system, §8-6-301.**County solid waste management system,** §8-6-301.**Covered electric generating unit.**

State emission plans, air pollution, §8-3-202.

Decommissioning.

Central interstate low-level radioactive waste compact, §8-8-202.

DEFINED TERMS —Cont'd**Demolisher.**

Litter control, §8-6-403.

Discharge.

Hazardous substances, §8-7-101.

Discharge into the waters of the state.

Pollution, §8-4-102.

Disclosure statement.

Environmental law, §8-1-106.

Disposable package or container.

Litter control, §8-6-403.

Disposal.

Central interstate low-level radioactive waste compact, §8-8-202.

Hazardous waste management, §8-7-203.

Pollution prevention, §8-10-203.

Resource reclamation act, §8-7-304.

Disposal facility.

Solid waste disposal financial assurance, §8-6-1602.

Disposal site.

Regional solid waste management, §8-6-702.

Solid waste disposal financial assurance, §8-6-1602.

Solid waste management, §8-6-203.

Disposal system.

Pollution, §8-4-102.

Distributor.

Petroleum storage tank trust fund, §8-7-902.

Public employees' chemical right to know law, §8-7-1003.

Electronic uniform used tire manifest system, §8-9-402.**Enclosed building.**

Litter control, §8-6-403.

End-of-life vehicle.

Mercury switch removal act, §8-9-603.

Environmental audit, §8-1-302.**Environmental audit report,** §8-1-302.**Environmental law.**

Voluntary environmental stewardship program, §8-1-206.

Environmental management system.

Voluntary environmental stewardship program, §8-1-206.

Environmental performance.

Voluntary environmental stewardship program, §8-1-206.

Evaluation.

Environmental testing, §8-2-203.

Existing municipal solid waste landfill unit.

Financial assurance, §8-6-1602.

DEFINED TERMS —Cont'd**Exposed.**

Public employees' chemical right to know law, §8-7-1003.

Exposure.

Public employees' chemical right to know law, §8-7-1003.

Extended care.

Central interstate low-level radioactive waste compact, §8-8-202.

Extra-large tire.

Used tires, §8-9-402.

Extra-wide single tire.

Used tires, §8-9-402.

Facilities.

Central interstate low-level radioactive waste compact, §8-8-202.

Environmental law, §§8-1-102, 8-1-107.

Hazardous waste management, §8-7-203.

Privatization project, §8-5-603.

Resource reclamation act, §8-7-304.

Solid waste disposal financial assurance, §8-6-1602.

Federal emission guidelines.

State emission plans, air pollution, §8-3-202.

Federal government.

Interstate environmental pollution, §8-8-102.

Fugitive amounts of yard waste,

§8-6-220.

Fund.

Abandoned agricultural pesticide disposal, §8-7-1203.

Hazardous substances, §8-7-503.

Natural resources damages trust fund, §8-12-102.

Generation.

Hazardous waste management, §8-7-203.

Pollution prevention, §8-10-203.

Generator.

Central interstate low-level radioactive waste compact, §8-8-202.

Pollution prevention, §8-10-203.

Government.

Interstate environmental pollution, §8-8-102.

Governmental entity.

Property assessed clean energy (PACE) program, §8-15-102.

Hazard communication standard.

Public employees' chemical right to know law, §8-7-1003.

Hazardous chemical.

Public employees' chemical right to know law, §8-7-1003.

DEFINED TERMS —Cont'd

Hazardous materials, §8-7-101.

Hazardous site.

Federally listed sites, §8-7-702.

Hazardous substance.

Federally listed hazardous sites, §8-7-702.

Remedial action trust fund act, §8-7-503.

Hazardous substance sites, §8-6-1502.

Remedial action trust fund act, §8-7-503.

Hazardous waste.

Management, §8-7-203.

Pollution prevention, §8-10-203.

Recycling high impact solid waste management facilities, §8-6-1502.

Resource reclamation act, §8-7-304.

Solid waste management, §8-6-203.

Hazardous waste management,

§8-7-203.

Resource reclamation act, §8-7-304.

High impact solid waste

management facility, §8-6-1502.

History of noncompliance.

Environmental law, §8-1-106.

Host community.

Recycling high impact solid waste management facilities, §8-6-1502.

Host state.

Central interstate low-level radioactive waste compact, §8-8-202.

Household.

Solid waste management, §8-6-203.

Household appliance.

Litter control, §8-6-403.

Household hazardous waste.

Solid waste management, §8-6-203.

Household hazardous waste storage or processing center.

Solid waste management, §8-6-203.

Illegal dump, §8-6-503.**Illegal dumping of solid waste,**

§8-6-503.

Illegal dumps control officer.

Sanitary landfills, §8-6-901.

Unlawful dumping, §8-6-503.

Implementing agreement.

Voluntary clean-up, §8-7-1102.

Impoundment.

Solid waste disposal financial assurance, §8-6-1602.

Incinerator ash.

Disposal, §8-6-1203.

Industrial, commercial or agricultural activity.

Voluntary clean-up, §8-7-1102.

DEFINED TERMS —Cont'd**Industrial waste.**

Pollution, §8-4-102.

Initial fee.

Environmental law, §8-1-102.

Inoperative household appliance.

Litter control, §8-6-403.

Institutional control.

Central interstate low-level radioactive waste compact, §8-8-202.

Inter-district used tire program,
§8-9-402.**Interested parties.**

Regional solid waste management, §8-6-702.

Interstate environmental pollution,
§8-8-102.**Junk motor vehicle,** §8-6-403.**Label.**

Public employees' chemical right to know law, §8-7-1003.
Recyclable items, §8-9-301.

Labeling.

Public employees' chemical right to know law, §8-7-1003.

Laboratory.

Environmental testing, §8-2-203.

Land application unit.

Solid waste disposal financial assurance, §8-6-1602.

Landfill, §8-6-503.

Post-closure trust fund, §8-6-1001.
Service areas, §8-6-1103.
Solid waste management and recycling fund, §8-6-603.

Landfill gas-to-energy system,
§8-6-220.**Large tire.**

Used tires, §8-9-402.

Lateral expansion.

Solid waste disposal financial assurance, §8-6-1602.

Lead-acid battery.

Recyclable items, §8-9-301.

License.

Sanitary landfills, §8-6-901.
Wastewater treatment plant, §8-5-201.

Licensing committee.

Sanitary landfills, §8-6-901.

Litter, §8-6-403.**Load rating.**

Used tires, §8-9-402.

Local government.

Privatization project, §8-5-603.

Long-term environmental project.

Environmental improvement, §8-5-902.

Low-level radioactive waste,
§8-7-601.

Central interstate compact, §8-8-202.

DEFINED TERMS —Cont'd**Major source construction.**

Air pollution, §8-4-303.

Management waste.

Central interstate low-level radioactive waste compact, §8-8-202.

Mandated environmental control.

Small business revolving loan fund, §8-5-803.

Manifest.

Hazardous waste management, §8-7-203.

Resource reclamation act, §8-7-304.

Manufacturer.

Mercury switch removal act, §8-9-603.

Material safety data sheet.

Public employees' chemical right to know law, §8-7-1003.

Materials in the recycling process,
§8-9-104.

Regional solid waste management, §8-6-702.

Matrix.

Environmental testing, §8-2-203.

Mercury minimization plan.

Mercury switch removal act, §8-9-603.

Mercury switch, §8-9-603.**Method.**

Environmental testing, §8-2-203.

Modification fee.

Environmental law, §8-1-102.

Monofill, §8-6-1203.**Motor vehicle racing facilities,**
§8-10-304.

Pollution, §8-10-302.

Municipality.

Solid waste management, §8-6-203.

Municipal solid waste.

Recycling, §8-9-104.

Municipal solid waste landfill unit.

Financial assurance, §8-6-1602.

NAAQS.

Air pollution, §8-4-303.

NAAQS state implementation plan.

Air pollution, §8-4-303.

National ambient air quality standard.

Air pollution, §8-4-303.

Natural resources.

Natural resources damages trust fund, §8-12-102.

Navigable waterway.

Litter control, §8-6-418.

New municipal solid waste landfill unit.

Financial assurance, §8-6-1602.

Nonmunicipal domestic sewage treatment works.

Water pollution, §8-4-203.

DEFINED TERMS —Cont'd**Notification of each party state.**

Central interstate low-level radioactive waste compact, §8-8-202.

Nutrient.

Water pollution, §8-4-232.

Occupied structure.

Commercial medical waste incineration facilities, §8-6-1302.

Occurrence.

Petroleum storage tank trust fund, §8-7-902.

Old vehicle tire.

Litter control, §8-6-403.

Open burning.

Residential yard waste, §8-6-1701.

Operator.

Petroleum storage tank trust fund, §8-7-902.

Regulated substance storage tanks, §8-7-801.

Sanitary landfills, §8-6-901.

Solid waste disposal financial assurance, §8-6-1602.

Wastewater treatment plant, §8-5-201.

Operator-in-training.

Sanitary landfills, §8-6-901.

Ordinance.

Privatization project, §8-5-603.

Organization.

Voluntary environmental stewardship program, §8-1-206.

Other waste.

Pollution, §8-4-102.

Outdoor lighting fixture.

Shielded outdoor lighting, §8-14-103.

Owner.

Petroleum storage tank trust fund, §8-7-902.

Property assessed clean energy (PACE) program, §8-15-102.

Regulated substance storage tanks, §8-7-801.

Solid waste disposal financial assurance, §8-6-1602.

Owners, operators or other responsible parties.

Resource reclamation act, §8-7-304.

PACE program, §8-15-102.**Party state.**

Central interstate low-level radioactive waste compact, §8-8-202.

Passive-site owner.

Federally listed hazardous sites, §8-7-702.

Permittee.

Landfill post-closure trust fund, §8-6-1001.

DEFINED TERMS —Cont'd**Permittee —Cont'd**

Solid waste management and recycling fund, §8-6-603.

Permitting.

Recycling high impact solid waste management facilities, §8-6-1502.

Person.

Air pollution, §8-4-303.

Central interstate low-level radioactive waste compact, §8-8-202.

Commercial medical waste incineration facilities, §8-6-1302.

Hazardous waste management, §8-7-203.

Incinerator ash and petroleum contaminated soil.

Disposal, §8-6-1203.

Mercury switch removal act, §8-9-603.

Petroleum storage tank trust fund, §8-7-902.

Phase I environmental site assessment consultants act, §8-7-1303.

Pollution, §8-4-102.

Pollution prevention, §8-10-203.

Property assessed clean energy (PACE) program, §8-15-102.

Regulated substance storage tanks, §8-7-801.

Remedial action trust fund act, §8-7-503.

Resource reclamation act, §8-7-304.

Solid waste disposal financial assurance, §8-6-1602.

Solid waste management, §8-6-203.

Unlawful dumping, §8-6-503.

Used tires, §8-9-402.

Pervasively regulated facility or activity.

Environmental law, §8-1-107.

Pesticide.

Abandoned agricultural pesticide disposal, §8-7-1203.

Solid waste management, §8-6-203.

Petroleum.

Regulated substance storage tanks, §8-7-801.

Storage tank trust fund, §8-7-902.

Surface water supply protection, §8-10-403.

Petroleum contaminated soils.

Disposal, §8-6-1203.

Phase I consultant.

Phase I environmental site assessment consultants act, §8-7-1303.

Phase I environmental site assessment, §8-7-1303.

DEFINED TERMS —Cont'd**Plant regulators.**

Abandoned agricultural pesticide disposal, §8-7-1203.

Plastic.

Recyclable items, §8-9-301.

Plastic bottle.

Recyclable items, §8-9-301.

Pollution, §8-4-102.**Pollution prevention, §8-10-203.**

Small business revolving loan fund, §8-5-803.

Post-closure corrective action.

Landfill post-closure trust fund, §8-6-1001.

Post-closure plan.

Solid waste disposal financial assurance, §8-6-1602.

Private owner or operator.

Privatization project, §8-5-603.

Privatization, §8-5-603.**Probable cause.**

Environmental law, §8-1-107.

Proceeds from commercial generator fees.

Used tires, §8-9-404.

Proceeds from import fees.

Used tires, §8-9-404.

Proceeds from rim removal fees.

Used tires, §8-9-404.

Proficiency test sample.

Environmental testing, §8-2-203.

Program.

Environmental testing, §8-2-203.

Project.

Regional solid waste management district, §8-6-801.

Project costs.

Regional solid waste management district, §8-6-801.

Property.

Voluntary clean-up, §8-7-1102.

Prospective purchaser.

Voluntary clean-up, §8-7-1102.

Provisional certificate.

Sanitary landfills, §8-6-901.

Public employee.

Chemical right to know law, §8-7-1003.

Public employer.

Chemical right to know law, §8-7-1003.

Public place.

Litter control, §8-6-403.

Public surface water supply.

Surface water supply protection, §8-10-403.

DEFINED TERMS —Cont'd**Public water supplier.**

Surface water supply protection, §8-10-403.

Qualified entity.

Used tires, §8-9-402.

RCRA, Subtitle D.

Solid waste disposal financial assurance, §8-6-1602.

Recovered material.

Sanitary landfills, §8-6-901.

Recyclable materials, §8-9-104.

Hazardous substance emergencies, §8-7-524.

Regional solid waste management, §8-6-702.

Recyclable materials collection center, §§8-6-702, 8-9-104.**Recyclables.**

Regional solid waste management, §8-6-702.

Recyclable tire.

Used tires, §8-9-402.

Recycle.

Used tires, §8-9-402.

Recycling, §§8-6-603, 8-9-104.

Regional solid waste management, §8-6-702.

Region.

Central interstate low-level radioactive waste compact, §8-8-202.

Regional facility.

Central interstate low-level radioactive waste compact, §8-8-202.

Regulated substance.

Storage tanks, §8-7-801.

Release.

Petroleum storage tank trust fund, §8-7-902.

Regulated substance storage tanks, §8-7-801.

Release site property owner.

Regulated substance storage tanks, §8-7-801.

Releases of hazardous substances.

Remedial action trust fund act, §8-7-503.

Remedial action.

Hazardous substances, §8-7-503.

Residential property.

Hazardous substances.

Voluntary cleanup, §8-7-1102.

Response cost.

Federally listed hazardous sites, §8-7-702.

Rigid plastic container.

Recyclable items, §8-9-301.

DEFINED TERMS —Cont'd**Salvage yard.**

Litter control, §8-6-403.

Sanitary landfills, §8-6-901.**Scrap recycling facility.**

Mercury switch removal act, §8-9-603.

Secondary containment.Regulated substance storage tanks,
§8-7-801.**Settling party.**Federally listed hazardous sites,
§8-7-702.**Sewage.**

Pollution, §8-4-102.

Sewer system.

Pollution, §8-4-102.

Shielded.

Outdoor lighting fixtures, §8-14-103.

Signator.Interstate environmental pollution,
§8-8-102.**Single use.**

Recyclable items, §8-9-301.

Site.Central interstate low-level radioactive
waste compact, §8-8-202.Hazardous waste management,
§8-7-203.

Resource reclamation act, §8-7-304.

Site assessment.

Voluntary clean-up, §8-7-1102.

Small tire.

Used tires, §8-9-402.

Solid waste, §§8-6-203, 8-6-503.Landfill post-closure trust fund,
§8-6-1001.

Landfill service areas, §8-6-1103.

Privatization project, §8-5-603.

Recycling, §8-9-104.

Recycling high impact solid waste
management facilities, §8-6-1502.Regional solid waste management,
§8-6-702.Regional solid waste management
district, §8-6-801.Solid waste management and recycling
fund, §8-6-603.**Solid waste disposal facility,
§8-6-901.****Solid waste disposal permit, §8-6-603.**Landfill post-closure trust fund,
§8-6-1001.**Solid waste disposal project,
§8-5-603.****Solid waste district.**

Recycling, §8-9-104.

Solid waste management, §8-6-603.**DEFINED TERMS —Cont'd****Solid waste management facility,
§8-6-901.****Solid waste management plan,
§8-6-603.****Solid waste management system,
§8-6-203.**

Counties, §8-6-301.

Financial assurance, §8-6-1602.

Regional solid waste management,
§8-6-702.**Solid waste reduction activities.**Solid waste management and recycling
fund, §8-6-603.**Solid waste transporter, §8-6-603.**Landfill post-closure trust fund,
§8-6-1001.**Source.**

Separation.

Regional solid waste management,
§8-6-702.**Source reduction.**

Pollution prevention, §8-10-203.

Source separation.

Recycling, §8-9-104.

State.Central interstate low-level radioactive
waste compact, §8-8-202.Interstate environmental compacts,
§8-8-102.**State implementation plan.**

Air pollution, §8-4-303.

State plan.State emission plans, air pollution,
§8-3-202.**Storage.**Central interstate low-level radioactive
waste compact, §8-8-202.Hazardous waste management,
§8-7-203.

Resource reclamation act, §8-7-304.

Storage tank.Petroleum storage tank trust fund,
§8-7-902.

Regulated substances, §8-7-801.

Supplier.Petroleum storage tank trust fund,
§8-7-902.**Surface impoundment.**Solid waste disposal financial
assurance, §8-6-1602.**Terminal.**Petroleum storage tank trust fund,
§8-7-902.**Threatened release.**

Hazardous substances, §8-7-503.

Tire collection center.

Used tires, §8-9-402.

DEFINED TERMS —Cont'd**Tire generator.**

Used tires, §8-9-402.

Tire manufacturer.

Used tires, §8-9-402.

Tire processing facility.

Used tires, §8-9-402.

Tire retailer.

Used tires, §8-9-402.

Tires.

Used tires, §8-9-402.

Tire transporter.

Used tires, §8-9-402.

Trade secret.

Public employees' chemical right to know law, §8-7-1003.

Transfer station.

Solid waste management, §8-6-203.

Transport.

Hazardous waste management, §8-7-203.

Resource reclamation act, §8-7-304.

Transporter.

Landfill post-closure trust fund, §8-6-1001.

Solid waste, §8-6-603.

Treatment.

Central interstate low-level radioactive waste compact, §8-8-202.

Hazardous waste management, §8-7-203.

Resource reclamation act, §8-7-304.

Treatment facility.

Hazardous waste management, §8-7-203.

Resource reclamation act, §8-7-304.

Treatment works.

Pollution, §8-4-102.

Underground storage tank.

Petroleum storage tank trust fund, §8-7-902.

Regulated substance storage tank, §8-7-801.

Unknown petroleum storage tank.

Petroleum storage tank trust fund, §8-7-902.

Used tire culled for resale, §8-9-402.**Used tire program, §8-9-402.****Vehicle.**

Litter control, §8-6-403.

Mercury switch removal act, §8-9-603.

Used tires, §8-9-402.

Vehicle recycler.

Mercury switch removal act, §8-9-603.

Waste.

Central interstate low-level radioactive waste compact, §8-8-202.

DEFINED TERMS —Cont'd**Waste minimization.**

Pollution prevention, §8-10-203.

Waste reduction.

Small business revolving loan fund, §8-5-803.

Waste tire.

Used tires, §8-9-402.

Waste tire site.

Used tires, §8-9-402.

Waste tires originating from a tire manufacturer.

Used tires, §8-9-402.

Wastewater project, §8-5-603.**Wastewater treatment plant, §8-5-201.****Watercourse.**

Surface water supply protection, §8-10-403.

Water quality standard.

Long-term environmental projects, §8-5-902.

Waters of the state.

Pollution, §8-4-102.

Wide-base tire.

Used tires, §8-9-402.

Work area.

Public employees' chemical right to know law, §8-7-1003.

Workplace.

Chemical risk.

Public employees' chemical right to know law, §8-7-1003.

Public employees' chemical right to know law, §8-7-1003.

Yard waste, §8-6-220.

Open burning, §8-6-1701.

Recycling, §8-9-104.

Regional solid waste management, §8-6-702.

DISASTERS.**Counties.**

Natural disasters.

Open burning of storm debris, §8-4-316.

DRUGS AND CONTROLLED**SUBSTANCES.****Contaminated property cleanup,**

§§8-7-1401 to 8-7-1407.

Contractor certification program, §8-7-1402.

Laboratories for manufacture found on private property.

Reporting by property owners, §8-7-1403.

List of properties contaminated, §8-7-1404.

DRUGS AND CONTROLLED SUBSTANCES —Cont'd

Contaminated property cleanup —Cont'd

Notice of removal, §8-7-1405.
Failure to comply, criminal penalty,
§8-7-1407.

Past contamination.

Report or disclosure not required.

Remediated property, §8-7-1406.

Persons or property residually
contaminated.

Removal, §8-7-1405.

Property owners.

Reporting laboratories found on
property, §8-7-1403.

Records of contaminated properties,
§8-7-1404.

Remediated property.

Report or disclosure of past
contamination not required,
§8-7-1406.

Remediating residually contaminated
property.

Responsibility, §8-7-1405.

Reporting contaminated properties,
§8-7-1403.

Residual contamination, §8-7-1405.

Unlawful entry, criminal penalty,
§8-7-1407.

Title of act, §8-7-1401.

Violations, §8-7-1405.

Manufacturing, compounding and dispensing.

Contaminated property cleanup,
§§8-7-1401 to 8-7-1407.

DUMPING.

Definitions.

Unlawful dumping, §8-6-503.

Penalties, §8-6-506.

Proceedings against unlawful dumping, §8-6-505.

Purpose of act, §8-6-502.

Sanctions for unpaid fines and costs, §8-6-507.

Short title, §8-6-501.

Unlawful dumping.

Definitions, §8-6-503.

Illegal dump eradication and
corrective action program,
§8-6-504.

Penalties, §8-6-506.

Proceedings generally, §8-6-505.

Purpose of act, §8-6-502.

Sanctions for unpaid fines and costs,
§8-6-507.

Short title of act, §8-6-501.

E

ELECTRICITY.

Air pollution, carbon dioxide emissions.

Emission plans, §§8-3-201 to 8-3-208.

Property assessed clean energy (PACE) program, §§8-15-101 to 8-15-119.

ELECTRIC UTILITIES.

Outdoor lighting fixtures.

Shielded outdoor lighting.

Duties of electric public utilities,
§8-14-104.

Shielded outdoor lighting.

Duties of electric public utilities,
§8-14-104.

EMERGENCIES.

Hazardous waste management.

Imminent hazards.

Orders.

Emergency order for imminent
hazards, §8-7-214.

EMINENT DOMAIN.

Solid waste management.

Regional planning districts and
boards, §8-6-715.

EMPLOYMENT RELATIONS.

Pollution.

Air pollution.

No authority to commission or
department over
employer-employee
relationships, §8-4-309.

Public officers and employees.

Chemical right to know act,
§§8-7-1001 to 8-7-1016.

ENERGY.

Clean energy.

Property assessed clean energy
(PACE) program, §§8-15-101 to
8-15-119.

Property assessed clean energy (PACE) program, §§8-15-101 to 8-15-119.

Yard waste.

Collection of landfill gas from fugitive
yard waste for conversion to
energy, §8-6-220.

ENVIRONMENTAL AUDIT

REPORTS, §§8-1-301 to 8-1-312.

Actions.

Partial disclosure, §8-1-311.

Required disclosures of privileged
information, §8-1-307.

ENVIRONMENTAL AUDIT REPORTS —Cont'd

Administrative procedure.

Required disclosures of privileged information, §8-1-307.

Attorney-client privilege.

Effect of chapter generally, §8-1-312.

Burden of proof.

Environmental audit privilege, §8-1-310.

Compliance.

Failure to achieve compliance.

Required disclosures in civil or administrative proceedings, §8-1-307.

Confidentiality of information.

Burden of proof of party asserting privilege, §8-1-310.

Creation of environmental audit privilege, §8-1-303.

Exceptions to privilege, §8-1-305.

Required disclosures in civil or administrative proceedings, §8-1-307.

Stipulation to waiver of privilege regarding certain information, §8-1-306.

Waiver of privilege, §8-1-304.

Criminal law and procedure.

Effect of privilege, §8-1-309.

Definitions, §8-1-302.

Disclosure of report.

Waiver of privilege in certain instances, §8-1-304.

Evidence.

Introduction of report by person conducting activity.

Waiver of privilege, §8-1-304.

Nonadmissibility of report, §8-1-303.

Exceptions to privilege, §8-1-305.

Fraud.

Assertion of privilege for fraudulent purpose.

Burden of proof, §8-1-310.

Required disclosures in civil or administrative proceedings.

Assertion of privilege for fraudulent purpose, §8-1-307.

Freedom of information.

Effect of chapter, §8-1-312.

Intent of act, §8-1-301.

Partial disclosures, §8-1-311.

Privileges.

Applicability, §8-1-309.

Burden of proof of party asserting privilege, §8-1-310.

Creation of environmental audit privilege, §8-1-303.

ENVIRONMENTAL AUDIT REPORTS —Cont'd

Privileges —Cont'd

Effect of chapter generally, §8-1-312.

Exceptions to privilege, §8-1-305.

Partial disclosures, §8-1-311.

Required disclosures in civil or administrative proceedings, §8-1-307.

Stipulation to waiver of privilege regarding certain information, §8-1-306.

Waiver of privilege, §8-1-304.

Purpose of act, §8-1-301.

Scope of chapter, §8-1-312.

Stipulations.

Waiver of privilege regarding certain information, §8-1-306.

Waiver.

Environmental audit privilege, §8-1-304.

Work product.

Effect of chapter generally, §8-1-312.

ENVIRONMENTAL COMPACT.

Appropriations.

Exceptions, §8-8-103.

Supplementary agreement appropriations, §8-8-103.

Contents of agreement, §8-8-102.

Legislative intent, §8-8-101.

Purpose, §8-8-101.

Text, §8-8-102.

ENVIRONMENTAL LABORATORY ACCREDITATION.

Appeals.

Procedure, §8-2-205.

Application for accreditation.

Criteria, §8-2-206.

Procedure, §8-2-206.

Citation of subchapter.

Short title, §8-2-201.

Commission.

Duties, §8-2-204.

Powers, §8-2-204.

Procedures, §8-2-205.

Definitions, §8-2-203.

Department of environmental quality.

Duties, §8-2-204.

Powers, §8-2-204.

Duration of accreditation, §8-2-207.

Enforcement of provisions, §8-2-205.

Fees, §8-2-209.

Hearings.

Procedure, §8-2-205.

Provision violations.

Penalties, §8-2-205.

ENVIRONMENTAL LABORATORY ACCREDITATION —Cont'd

Purpose of act, §8-2-202.

Renewal of accreditation, §8-2-207.

Revocation of accreditation,
§8-2-208.

Rules and regulations.

Department of environmental quality,
§8-2-204.

Generally, §8-2-204.

Procedure for issuance, §8-2-205.

Short title of subchapter, §8-2-201.

ENVIRONMENTAL PROTECTION.

Audits.

Environmental audit reports,
§§8-1-301 to 8-1-312.

**Controlled substances contaminated
property cleanup**, §§8-7-1401 to
8-7-1407.

Environmental audit reports,
§§8-1-301 to 8-1-312.

**Environmental site assessment
consultants.**

List maintained by department,
§§8-7-1301 to 8-7-1304, 8-7-1311.

Long-term environmental projects,
§§8-5-901 to 8-5-905.

Approval, §8-5-903.

Definitions, §8-5-902.

Legislative findings and intent,
§8-5-901.

Modification of water quality
standards, §8-5-904.

Project completion, §8-5-905.

Reports.

Environmental audit reports,
§§8-1-301 to 8-1-312.

ENVIRONMENTAL SITE ASSESSMENT CONSULTANTS.

Phase I consultants.

Definitions, §8-7-1303.

List maintained by department of
environmental quality, §8-7-1304.

Fee to be placed on list, §8-7-1311.

Purpose of act, §8-7-1302.

Rules to implement.

Pollution control and ecology
commission to promulgate,
§8-7-1304.

Purpose of act, §8-7-1302.

Title of act, §8-7-1301.

EVIDENCE.

Environmental audit reports.

Introduction of report by person
conducting activity.

Waiver of privilege, §8-1-304.

EVIDENCE —Cont'd

Environmental audit reports

—Cont'd

Nonadmissibility of report, §8-1-303.

Litter control.

Motor vehicles.

Driver of motor vehicle.

Evidence against, §8-6-409.

**Public employees' chemical right to
know.**

Cease and desist orders.

Prima facie evidence of violation,
§8-7-1014.

EXAMINATIONS.

Hazardous waste management.

Permitting examinations.

Misdemeanor for violation of
provisions, §8-7-225.

Requirements, §8-7-225.

Wastewater plant operators.

Commission, §8-5-205.

Fees, §8-5-209.

F

FEES.

**Environmental laboratory
accreditation**, §8-2-209.

**Environmental site assessment
consultants.**

Phase I consultants.

List maintained by department of
environmental quality.

Placement on list, §8-7-1311.

Hazardous substance emergencies.

Remedial action trust fund.

Generation of hazardous waste,
§8-7-518.

Hazardous waste management.

Applicable fees, §8-7-226.

Petroleum products.

Storage tank fund.

Petroleum environmental assurance
fees, §8-7-906.

Pollution.

Temporary variances or interim
authority request, §8-4-230.

Solid waste management.

Landfill disposal fees.

Generally, §§8-6-1001 to 8-6-1005.

Management and recycling fund.

Collection of fees, §8-6-607.

Computation, §8-6-611.

Landfill disposal fees, §8-6-606.

Regional planning districts and
boards.

Rents, fees and charges, §8-6-714.

FEES —Cont'd**Solid waste management —Cont'd**

Sanitary landfills.

Licensing, §8-6-909.

Used tires, §8-9-404.

Applicability of fees, §8-9-413.

Extra-large tires, §8-9-412.

Wastewater plant operators, §8-5-209.**Water pollution.**Short-term activity authorization,
§8-4-234.**FINANCE AND ADMINISTRATION
DEPARTMENT.****Natural resources damages trust
fund, §8-12-105.****FINES.****Hazardous waste management.**

Act violations, §8-7-204.

Remedial action trust fund, §8-7-504.

Litter control.Covering contents being hauled by
commercial or for-hire hauler,
§8-6-407.Criminal offenses of littering and
commercial littering, §8-6-406.Disposition of fines collected to
locality, §8-6-404.

Glass containers.

Possession or use on navigable
waterways, §8-6-418.Junk cars, old tires or abandoned
household appliances.Discarding in certain places
prohibited, §8-6-408.**Outdoor lighting fixtures.**

Shielded outdoor lighting.

Second or subsequent offense,
§8-14-105.**Pollution.**

Administrative inspections.

Refusal of right of entry of
department personnel, §8-1-107.

Air pollution, §8-4-103.

Chronic noncompliance, §8-5-702.

Underground salt water disposal
systems, §8-5-502.

Water pollution, §8-4-103.

Radiation protection.Violation of radioactive waste compact,
§8-8-201.**Shielded outdoor lighting.**Second or subsequent offense,
§8-14-105.**Solid waste management.**Regional regulatory violations,
§8-6-722.**FINES —Cont'd****Solid waste management —Cont'd**Violations of solid waste management
act, §8-6-204.**FIRES AND FIRE PREVENTION.****Open burning of residential yard
waste, §§8-6-1701 to 8-6-1704.****FLOOD LIGHTS.****Shielded outdoor lighting, §§8-14-101
to 8-14-107.****FOOD.****Litter control.**Transporting foodstuffs or beverages
on navigable waterway, §8-6-418.**FRAUD.****Environmental audit reports.**Assertion of privilege for fraudulent
purpose.

Burden of proof, §8-1-310.

Required disclosures in civil or
administrative proceedings.Assertion of privilege for fraudulent
purpose, §8-1-307.**FREEDOM OF INFORMATION.****Environmental audit reports.**

Effect of chapter, §8-1-312.

G**GARBAGE AND REFUSE.****Litter control.**General provisions, §§8-6-401 to
8-6-418.**Medical waste incineration****facilities, §§8-6-1301 to 8-6-1307.****Solid waste management.**Medical waste incineration facilities,
§§8-6-1301 to 8-6-1307.**GASOLINE.****Tanks.**

Storage tanks, §§8-7-801 to 8-7-817.

GENERAL ASSEMBLY.**Pollution.**

Air quality areas.

Designation.

General assembly sole authority,
§8-3-101.**GOOD SAMARITANS.****Hazardous waste management.**Civil liability of those assisting at
accidents, §8-7-101.

H**HAZARDOUS MATERIALS,
SUBSTANCES AND WASTE.****Accidents.**

Civil liability for those assisting at accidents, §8-7-101.

Actions.

Department powers, §8-7-209.
Enforcement of provisions, §8-7-204.
Private right of action, §8-7-206.

Appeals.

Enforcement of subchapter, §8-7-204.
Resource reclamation.
Applicable provisions, §8-7-309.

Citation, §8-7-201.**Civil liability for assisting at accidents.**

Civil damages for negligence, §8-7-101.
Definitions, §8-7-101.
No civil liability, §8-7-101.

Commercial facilities.

Permits.
Terms and conditions, §8-7-219.

Commission.

Defined, §8-7-203.

Coordinated procedures.

Consideration by department, §8-7-212.

Corrective action.

Permitted facilities and interim status facilities, §8-7-227.

Declaration of policy, §8-7-202.**Definitions, §8-7-203.**

Civil liability for assisting at accidents, §8-7-101.
Resource reclamation, §8-7-304.
Superfund sites, §8-7-702.

Department of environmental quality.

Defined, §8-7-203.
Designated as state agency for participation in federal program, §8-7-208.
Duties, §8-7-209.
Interstate cooperation.
Authority of department, §8-7-208.
Powers, §8-7-209.
Resource reclamation.
Duties, §8-7-308.
Powers, §8-7-308.
Varying conditions, coordinated procedures and integrated administration.
Consideration by department, §8-7-212.

Director.

Defined, §8-7-203.

**HAZARDOUS MATERIALS,
SUBSTANCES AND WASTE**

—Cont'd

Director —Cont'd

Imminent hazards.
Duties of director, §8-7-214.

Disposal.

Defined, §8-7-203.

Duties, §8-7-209.**Emergencies.**

Emergency order for imminent hazards, §8-7-214.

Environmental site assessment consultants.

Phase I consultants.
List maintained by department of environmental quality, §§8-7-1301 to 8-7-1304, 8-7-1311.

Examinations.

Permitting examinations, §8-7-225.

Facilities.

Defined, §8-7-203.

Federally listed hazardous sites.

Superfund sites, §§8-7-701 to 8-7-707.

Fees.

Applicable fees, §8-7-226.

Fines.

Violations of subchapter, §8-7-204.

Funds.

Permit fund.
Creation, §8-7-226.

Generation.

Defined, §8-7-203.

Good Samaritans.

Civil liability of those assisting in accidents, §8-7-101.

Hearings.

Permit revocation, denial or modification, §8-7-222.
Procedures, §8-7-213.

Household hazardous waste storage or processing centers.

Permit requirements, §8-6-223.

Imminent hazards.

Duties of director, §8-7-214.

Integrated administration.

Consideration by department, §8-7-212.

Interim operations, §8-7-216.

Authority acquired pursuant to subsections, §8-7-216.
Corrective action at interim status facilities, §8-7-227.
Disciplinary actions.

Applicability of subsection, §8-7-216.

Investigations.

Power of department, §8-7-209.

HAZARDOUS MATERIALS, SUBSTANCES AND WASTE

—Cont'd

Investigations —Cont'd

- Requirements as to, §8-7-225.
- Misdemeanors for violations,
§8-7-225.

Landfills.

- Location of landfill, §8-7-223.

Liability.

- Civil liability for those assisting at accidents, §8-7-101.
- Superfund sites, passive site owners.
- Interference with efforts of settling party to carry out approved response actions, §8-7-703.

Manifest.

- Defined, §8-7-203.

Medical waste.

- Incineration facilities, §§8-6-1301 to 8-6-1307.

Notice.

- Procedure, §8-7-213.

Penalties.

- Corrective action at permitted facilities and interim status facilities.
- Civil penalties for noncompliance with orders, §8-7-227.
- Permits.
- Violations of subchapter, §8-7-204.
- Violations of act, §8-7-204.

Permits.

- Commercial facilities.
- Terms and conditions, §8-7-219.
- Compliance with subchapter, state and federal standards and regulations.
- Requirements for issuance, §8-7-218.
- Corrective action at permitted facilities.
- Permits to require, §8-7-227.

Denial.

- Hearing upon denial, §8-7-222.

Department.

- Powers of department, §8-7-209.

Duration, §8-7-220.

Interim operations, §8-7-216.

Issuance.

- General requirements, §8-7-216.

Modification.

- Hearing upon modification, §8-7-222.

Notice of hearing required, §8-7-217.

Penalties.

- Violations of subchapter, §8-7-204.

Renewal, §8-7-220.

Requirements as to, §8-7-215.

Revocation, §8-7-221.

- Hearing upon revocation, §8-7-222.

HAZARDOUS MATERIALS, SUBSTANCES AND WASTE

—Cont'd

Persons.

- Defined, §8-7-203.

Prohibited acts.

- Enumerated, §8-7-205.
- Penalties, §8-7-204.

Public employees' chemical right to know act, §§8-7-1001 to 8-7-1016.

Purpose of act, §8-7-202.

Records.

- Maintaining records.
- Misdemeanors for violations,
§8-7-225.
- Requirements, §8-7-225.

Resource reclamation.

- Acts or omissions of third parties, effect, §8-7-307.
- Citation of subchapter, §8-7-301.
- Criminal penalties for violations,
§8-7-307.
- Declaration of policy, §8-7-303.
- Definitions, §8-7-304.
- Department.
- Duties, §8-7-308.
- Powers, §8-7-308.
- Findings of legislature, §8-7-302.
- Industrial waste treatment facilities.
- Applicability of act, §8-7-305.
- Legislative findings, §8-7-302.
- Policy.

- Declaration, §8-7-303.

- Prohibited acts, §8-7-307.

- Short title, §8-7-301.

- Treatment facilities.

- Industrial waste treatment facilities.

- Applicability of act, §8-7-305.

- Violations of act, §8-7-307.

Rules and regulations.

- Department.

- Powers and duties, §8-7-209.

- Existing rules and regulations to remain in full force and effect,
§8-7-210.

- Procedure for issuance, §8-7-213.

- Transportation of hazardous waste,
§8-7-224.

- Variances.

- When granted, §8-7-211.

Short title, §8-7-201.

Sites.

- Defined, §8-7-203.
- Superfund sites, §§8-7-701 to 8-7-707.

Storage.

- Defined, §8-7-203.

Subpoenas.

- Procedure, §8-7-213.

HAZARDOUS MATERIALS, SUBSTANCES AND WASTE

—Cont'd

Superfund sites.

Ad valorem tax exemptions, §8-7-706.

Costs.

Passive site owners.

Interference with efforts of
settling party to carry out
approved response action.

Liability for costs of violations of
subsection, §8-7-703.

Definitions, §8-7-702.

Directors and officers.

Liability, §8-7-707.

Enforcement.

Injunctions, §8-7-704.

Hazardous sites.

Defined, §8-7-702.

Restrictions on use, §8-7-705.

Injunctions.

Enforcement, §8-7-704.

Legislative intent, §8-7-701.

Passive site owners.

Defined, §8-7-702.

Interference by owners, §8-7-703.

Purpose, §8-7-701.

Remediation, §8-7-701.

Settling parties.

Defined, §8-7-702.

Interference by passive site owners,
§8-7-703.

Surveys and surveyors.

Facility owners.

Duties, §8-7-225.

Third parties.

Resource reclamation.

Omissions of third party.

Liability not imputed, §8-7-307.

Transportation.

Defined, §8-7-203.

Rules and regulations, §8-7-224.

Treatment facilities.

Defined, §8-7-203.

Resource reclamation.

Industrial waste treatment facilities.

Applicability of act, §8-7-305.

United States.

Department designated as state
agency for participation in federal
program, §8-7-208.

Variances.

When granted, §8-7-211.

Varying conditions.

Consideration by department,
§8-7-212.

Venue.

Legal proceedings affecting hazardous
waste treatment, §8-7-207.

HAZARDOUS MATERIALS, SUBSTANCES AND WASTE

—Cont'd

Violations of provisions, §8-7-205.

Continued or repeated violations
constitute separate offense,
§8-7-204.

Penalties, §8-7-204.

Private right of action, §8-7-206.

HAZARDOUS SUBSTANCE EMERGENCIES.

Appeals.

Remedial action trust fund.

Applicable provisions, §8-7-519.

Final orders.

Appeals from, §8-7-519.

Apportionment of costs, §8-7-513.

Construction and interpretation.

Remedial action trust fund.

Legislative intent and purposes,
§8-7-502.

Contributions.

Liability.

Remedial action trust fund,
§8-7-520.

Costs.

Apportionment of costs, §8-7-513.

Damages.

Remedial action trust fund.

Violations of provisions.

Punitive damages allowable,
§8-7-517.

Definitions.

Remedial action trust fund, §8-7-503.

Department.

Remedial action trust fund.

Definition of department, §8-7-503.

Remedial and removal authority of
department, §8-7-508.

Director.

Remedial action trust fund.

Administration of fund, §8-7-509.

Definition of director, §8-7-503.

Expenditures, §8-7-509.

Remedial and removal authority of
department, §8-7-508.

Expenditures.

Remedial action trust fund.

Lien for expenditures and value of
improvements, §8-7-516.

Recovery, §8-7-514.

Limitations, §8-7-515.

Federal act.

Remedial action trust fund.

Definition of federal act, §8-7-503.

Fees.

Remedial action trust fund.

Generation of hazardous waste,
§8-7-518.

HAZARDOUS SUBSTANCE**EMERGENCIES —Cont'd****Generation.**

- Remedial action trust fund.
- Definition of generation, §8-7-503.
- Fees on generation of hazardous waste, §8-7-518.

Improvements.

- Remedial action trust fund.
- Lien for expenditures and value of improvements, §8-7-516.

Liability.

- Contributions.
 - Remedial action trust fund, §8-7-520.
- Director.
 - Remedial action trust fund.
 - Remedial authority of department.
 - Persons exempt from actions of director, §8-7-502.
- Remedial action trust fund, §8-7-512.
- Actions relating to remedial action, §8-7-522.

Liens.

- Remedial action trust fund.
- Lien for expenditures and value of improvements, §8-7-516.

Negligence.

- Remedial action trust fund.
- Liability.
- Violations of act, §8-7-512.

Notice.

- Remedial action trust fund.
- Violations of provisions.
- Lien for expenditures and value of improvements, §8-7-516.

Penalties.

- Remedial action trust fund.
- Violations of provisions, §8-7-504.

Permission.

- Remedial action trust fund.
- Definition of commission, §8-7-503.

Persons.

- Remedial action trust fund.
- Definition of person, §8-7-503.

Punitive damages.

- Remedial action trust fund, §8-7-517.

Recycling transactions, §8-7-524.**Release of hazardous substances.**

- Remedial action trust fund.
- Definition of release, §8-7-503.
- Threatened release.
- Defined, §8-7-503.
- Threatened release.
- Remedial action trust fund.
- Definition of threatened release, §8-7-503.

HAZARDOUS SUBSTANCE**EMERGENCIES —Cont'd****Remedial action trust fund.**

- Actions.
 - Federal actions or compensation not to be duplicated, §8-7-510.
- Appeals.
 - Applicable provisions, §8-7-519.
- Appropriations, §8-7-525.
- Citation of subchapter.
- Short title, §8-7-501.
- Commission on pollution control and ecology.
 - Definition of "commission," §8-7-503.
- Compliance of federal and state entities, §8-7-507.
- Costs.
 - Apportionment of costs, §8-7-513.
- Creation, §8-7-509.
- Damages.
 - Punitive damages, §8-7-517.
- Definitions, §8-7-503.
- Department.
 - Definition of department, §8-7-503.
 - Remedial and removal authority of department, §8-7-508.
- Director.
 - Administration of fund, §8-7-509.
 - Defined, §8-7-503.
 - Expenditures, §8-7-509.
 - Remedial and removal authority of department, §8-7-508.
- Duplication of federal actions or compensation.
- Prohibited, §8-7-510.
- Expenditures.
 - Lien for expenditures and value of improvements, §8-7-516.
 - Recovery, §8-7-514.
 - Limitations, §8-7-515.
- Federal act.
 - Definition of federal act, §8-7-503.
- Federal actions or compensation not to be duplicated, §8-7-510.
- Fees.
 - Generation of hazardous waste, §8-7-518.
- Final orders.
 - Appeals from, §8-7-519.
- Furnishing information, §8-7-511.
- Generation.
 - Definition of generation, §8-7-503.
 - Fees on generation of hazardous waste, §8-7-518.
- Information to be furnished, §8-7-511.
- Intent of legislature, §8-7-502.
- Legislative intent, §8-7-502.

HAZARDOUS SUBSTANCE**EMERGENCIES —Cont'd****Remedial action trust fund —Cont'd**

Liability.

Actions relating to remedial action,
§8-7-522.

Enumerated situations giving rise to
liability, §8-7-512.

Misdemeanors, §8-7-504.

Money.

Deposited in fund, §8-7-509.

Penalties.

Violations of provisions, §8-7-504.

Persons.

Definition of person, §8-7-503.

Prohibited acts, §8-7-505.

Punitive damages, §8-7-517.

Release of hazardous substances.

Definition of releases of hazardous
substances, §8-7-503.

Threatened release.

Defined, §8-7-503.

Remedial and removal authority of
department, §8-7-508.

Rules and regulations.

Adoption.

Administrative procedure,
§8-7-506.

Short title of subchapter, §8-7-501.

Sites.

Hazardous substance sites.

Defined, §8-7-503.

Site access for remedial or removal
action, §8-7-521.

Storage.

Definition of storage, §8-7-503.

Threatened release.

Definition of threatened release,
§8-7-503.

Treatment.

Definition of treatment, §8-7-503.

Unlawful acts, §8-7-505.

Penalties, §8-7-504.

Rules and regulations.

Remedial action trust fund.

Administrative procedure, §8-7-506.

Sites.

Remedial action trust fund.

Hazardous substance sites.

Defined, §8-7-503.

Site access for remedial or removal
action, §8-7-521.

State departments and agencies.

Remedial action trust fund.

Compliance of state and federal
entities, §8-7-507.

Storage.

Remedial action trust fund.

Definition of storage, §8-7-503.

HAZARDOUS SUBSTANCE**EMERGENCIES —Cont'd****Threatened release.**

Remedial action trust fund.

Definition of threatened release,
§8-7-503.

Treatment.

Remedial action trust fund.

Definition of treatment, §8-7-503.

United States.

Remedial action trust fund.

Compliance of federal and state
entities, §8-7-507.

HEALTH.

Solid waste management, §§8-6-201 to
8-6-510.

HEARINGS.**Environmental laboratory
accreditation.**

Procedure, §8-2-205.

Hazardous waste management.

Permits.

Revocation, denial or modification,
§8-7-222.

Procedures, §8-7-213.

Petroleum products tanks.

Penalties, imposition, §8-7-806.

Pollution.

Water pollution.

Application for permit.

Denial, §8-4-205.

Modification, §8-4-205.

Revocation, §8-4-205.

Commission.

Application for permit, §8-4-203.

Authority as to, §8-4-210.

Violation of provisions.

Conduct of hearing, §8-4-219.

Notice requirements, §8-4-218.

Order of commission without
hearing, §8-4-220.

Solid waste management.

Landfill and transfer station permits,
issuance, §8-6-706.

Unlawful dumping.

Order to remove, §8-6-505.

I**IMMUNITY.****Hazardous substance emergencies.**

Director.

Remedial action trust fund.

Remedial authority of department.

Persons exempt from actions of
director, §8-7-502.

IMMUNITY —Cont'd**Hazardous substance emergencies —Cont'd**

Judgments.

Remedial action trust fund.

Contributions, §8-7-520.

Remedial action trust fund, §8-7-512.

Actions relating to remedial action, §8-7-522.

Hazardous waste management.

Civil liability of those assisting at accidents, §8-7-101.

Superfund sites.

Directors and officers, §8-7-707.

Passive site owners.

Interference with efforts of settling party to carry out approved response actions, §8-7-703.

PACE program.

Immunity, §8-15-104.

Petroleum products.

Storage tanks of regulated substances.

Owners.

Underground storage tanks.

Release of substance, §8-7-807.

Solid waste management.

Third parties.

Omissions by third party.

Liability not imputed, §8-6-205.

IMPROVEMENTS.**Hazardous substance emergencies.**

Remedial action trust fund.

Lien for expenditures and value of improvements, §8-7-516.

INDUSTRY.**Voluntary clean-up of abandoned sites, §§8-7-1101 to 8-7-1104.****INJUNCTIONS.****Hazardous waste management.**

Superfund sites.

Interference with implementation of response actions, §8-7-704.

Litter control.

Enforcement of act, §8-6-405.

Outdoor lighting fixtures.

Shielded outdoor lighting.

Enforcement of act, §8-14-106.

Petroleum products tanks.

Enforcement of provisions by department, §8-7-806.

Pollution.

Air pollution, §8-4-103.

Chronic noncompliance, §8-5-702.

Water pollution, §8-4-103.

INJUNCTIONS —Cont'd**Public employees' chemical right to know.**

Violations of provisions, §8-7-1014.

Shielded outdoor lighting.

Enforcement of act, §8-14-106.

Wastewater plant operators, §8-5-202.**INSPECTIONS.****Pollution.**

Permits.

Inspection warrant, §8-1-107.

Water pollution.

Commission.

Authority as to, §8-4-216.

Solid waste management.

Records and examinations, §8-6-214.

INSURANCE.**Medical waste incineration facilities.**

Evidence of liability insurance, §8-6-1307.

Petroleum products.

Storage tanks of regulated substances.

Insurance pools.

Owners or operators of storage tanks, §8-7-810.

Water pollution.

Permits.

Financial assurance of applicants, §8-4-203.

INTERSTATE COMPACTS.**Pollution.**

Environmental compact, §§8-8-101 to 8-8-103.

Interstate environmental compact, §§8-8-101 to 8-8-103.

Radiation protection.

Central interstate low-level radioactive waste compact, §§8-8-201 to 8-8-206.

INVESTIGATIONS.**Hazardous waste management.**

Power of department, §8-7-209.

Requirements as to, §8-7-225.

Misdemeanors for violations, §8-7-225.

Pollution.

Permits, §8-1-107.

Water pollution.

Commission.

Authority as to, §8-4-210.

Public employees' chemical right to know.

Complaints.

Timely investigation by director, §8-7-1013.

J**JURISDICTION.****Pollution.**

Air pollution.

Political subdivisions forbidden to legislate on air pollution,
§8-4-306.

Exceptions, §8-4-306.

L**LABELS.****Public employees' chemical right to know act.**

Labeling requirements, §8-7-1005.

Solid waste management.

Recycling.

Plastic container labeling, §8-9-302.

LAW ENFORCEMENT OFFICERS.**Controlled substances.**

Contaminated property resulting from manufacture.

Notice of removal, delivery, residual contamination, removal of persons or property, §8-7-1405.

LETTERS OF CREDIT.**Water pollution.**

Permits.

Financial assurance of applicants,
§8-4-203.

LICENSES AND PERMITS.**Medical waste.**

Incineration facilities.

Limitations, §8-6-1306.

Procedure, §8-6-1305.

Transferability, §8-6-1305.

National pollutant discharge elimination system permit.

Financial prerequisites to issuance,
§8-4-203.

Petroleum products.

Storage tanks of regulated substances.
Certification.

Installation or testing.

License required, §8-7-805.

LIENS.**Hazardous substance emergencies.**

Remedial action trust fund.

Lien for expenditures and value of improvements, §8-7-516.

LIGHT POLLUTION.**Shielded outdoor lighting, §§8-14-101 to 8-14-107.****LIGHTS.****Shielded outdoor lighting, §§8-14-101 to 8-14-107.****LIQUEFIED PETROLEUM GAS.****Petroleum products.**

Storage tanks of regulated substances,
§§8-7-801 to 8-7-817.

Storage tanks of regulated substances.

Petroleum products, §§8-7-801 to 8-7-817.

LITTER CONTROL.**Abandonment.**

Definition of abandoned, §8-6-403.

Junk cars, old tires or abandoned household appliances.

Authority to take possession of discarded items.

Notice, §8-6-413.

Discarding in certain places prohibited, §8-6-408.

Notification to owners and lienholders.

Reclamation, §8-6-414.

Sale, §8-6-415.

Disposition of proceeds of sale to litter control account,
§8-6-416.

Citation of subchapter, §8-6-401.**Code enforcement officers, §8-6-412.****Commercial littering.**

Defined, §8-6-403.

Penalties for offense, §8-6-406.

Commercial or for-hire hauling.

Covering contents, §8-6-407.

Criminal offenses of littering and commercial littering, §8-6-406.**Definitions, §8-6-403.****Demolishers.**

Defined, §8-6-403.

Disposable packages or containers.

Defined, §8-6-403.

Dumping.

Unlawful dumping.

Definitions, §8-6-503.

Penalties, §8-6-506.

Proceedings against unlawful dumping, §8-6-505.

Purpose of act, §8-6-502.

Sanctions for unpaid fines and costs,
§8-6-506.

Short title, §8-6-501.

Enclosed buildings.

Defined, §8-6-403.

Enforcement of act, §8-6-412.

LITTER CONTROL —Cont'd**Evidence.**

Motor vehicles.

Driver of motor vehicle.

Evidence against, §8-6-409.

For-hire trash haulers.

Covering contents being hauled,
§8-6-407.

Garbage cans.

State to place other receptacles on
public highways, §8-6-411.

Garbage trucks.

Covering of contents, §8-6-407.

Glass containers.

Possession or use on navigable
waterways, §8-6-418.

Household appliances.

Defined, §8-6-403.

Demolishers.

Defined, §8-6-403.

Inoperative household appliances.

Defined, §8-6-403.

Illegal dumps, control officers,

§8-6-412.

Injunctions.

Enforcement of act, §8-6-405.

Legislative intent, §8-6-402.**Litter control account.**

Sale of junk cars, old tires and
abandoned household appliances.

Disposition of proceeds from sale,
§8-6-416.

Motor vehicles.

Covering of contents being hauled,
§8-6-407.

Definition of vehicles, §8-6-403.

Demolishers.

Defined, §8-6-403.

Evidence against driver, §8-6-409.

Junk cars.

Authority to take possession of
discarded items.

Notice, §8-6-413.

Definition of junk motor vehicles,
§8-6-403.

Discarding in certain places
prohibited, §8-6-408.

Notice to owners and lienholders.

Reclamation, §8-6-414.

Sale, §8-6-415.

Disposition of proceeds to litter
control account, §8-6-416.

Repair shops.

Automobile repair shops.

Defined, §8-6-403.

Salvage yards.

Defined, §8-6-403.

LITTER CONTROL —Cont'd**Motor vehicles —Cont'd**

Tires.

Old vehicle tires.

Defined, §8-6-403.

Navigable waterways, §8-6-418.**Notice.**

Junk cars, old tires or abandoned
household appliances.

Authority to take possession of
discarded items, §8-6-413.

Public notice required, §8-6-410.

Penalties.

Disposition of fines collected to
locality, §8-6-404.

Glass containers.

Possession or use on navigable
waterways, §8-6-418.

Junk cars, old tires or abandoned
household appliances.

Discarding items unlawfully,
§8-6-408.

Offenses of littering and commercial
littering, §8-6-406.

Vehicles, covering of contents being
hauled, §8-6-407.

**Powers of enforcement officers,
§8-6-412.****Prohibition of littering, §8-6-406.**

Fines, disposition of fines collected to
locality, §8-6-404.

Public places.

Defined, §8-6-403.

Purpose of act, §8-6-402.**Receptacles.**

State to place along public highways,
§8-6-411.

Sales.

Junk cars, old tires and abandoned
household appliances, §8-6-415.

Solid waste management.

Penalties, §8-6-204.

Prohibited acts, §8-6-205.

Tires.

Old vehicle tires.

Defined, §8-6-403.

Title of subchapter, §8-6-401.**Transporting foodstuffs or
beverages on navigable
waterway, §8-6-418.****Trash cans.**

State to place receptacles along public
highways, §8-6-411.

Who may enforce, §8-6-412.**LOANS.****Property assessed clean energy
(PACE) program.**

Financing projects, §8-15-113.

LOCAL GOVERNMENTS.**Pollution.**

Air pollution.

Prohibition on legislating on air pollution, §8-4-306.

Exceptions, §8-4-306.

Solid waste.

Finance.

Regional planning districts and boards.

Bond issues generally, §§8-6-801 to 8-6-814.

Restriction on local government bonds and pledges, §8-6-713.

Wastewater privatization.

Definition of local governments, §8-5-603.

M**MEDICAL WASTE INCINERATION FACILITIES, §§8-6-1301 to 8-6-1307.**

Applicability of subchapter, §8-6-1304.

Construction and interpretation of provisions, §8-6-1303.

Definitions, §§8-6-1302, 8-6-1305.

Financial assurance requirements, §8-6-1307.

Insurance.

Evidence of liability insurance, §8-6-1307.

Legislative findings, §8-6-1301.

Permits.

Limitations, §8-6-1306.

Procedure, §8-6-1305.

Transferability, §8-6-1305.

Purpose, §8-6-1301.

MERCURY SWITCH REMOVAL FROM MOTOR VEHICLES, §§8-9-601 to 8-9-610.

Citation of act, §8-9-601.

Definitions, §8-9-603.

Enforcement of act, §8-9-610.

Manufacturers.

Mercury minimization plan, §8-9-604.

Approval and implementation, §8-9-605.

Reports.

Annual reporting, §8-9-607.

Design for recycling, §8-9-608.

Mercury-added vehicle components.

Removal and proper management, §8-9-606.

Mercury minimization plan, §8-9-604.

Approval and implementation, §8-9-605.

MERCURY SWITCH REMOVAL FROM MOTOR VEHICLES

—Cont'd

Penalties for violations, §8-9-610.

Pollution control and ecology commission.

Rules and regulations, §8-9-609.

Purpose of act, §8-9-602.

Recycling.

Design for recycling, §8-9-608.

Reports by manufacturers.

Annual reporting, §8-9-607.

Design for recycling, §8-9-608.

Title of act, §8-9-601.

MOTOR VEHICLES.**Batteries.**

Lead-acid batteries.

Recycling, §8-9-301.

Lead-acid batteries.

Recycling, §8-9-303.

Litter control.

Covering of contents being hauled, §8-6-407.

Definition of vehicles, §8-6-403.

Demolishers.

Defined, §8-6-403.

Evidence against driver, §8-6-409.

Junk cars.

Authority to take possession of discarded items.

Notice, §8-6-413.

Definition of junk motor vehicles, §8-6-403.

Discarding in certain places prohibited, §8-6-408.

Notice to owners and lienholders.

Reclamation, §8-6-414.

Sale, §8-6-415.

Disposition of proceeds to litter control account, §8-6-416.

Mercury switches, §§8-9-601 to 8-9-610.

Racing.

Construction of facilities.

Pollution, §8-10-302.

Permits, §§8-10-303, 8-10-304.

Used motor oil.

Recycling, §8-9-304.

MUNICIPALITIES.**Pollution.**

Air pollution.

Political subdivisions forbidden to legislate on air pollution, §8-4-306.

Exceptions, §8-4-306.

Wastewater plant operators.

Unlawful acts, §8-5-203.

MUNICIPALITIES —Cont'd**Wastewater privatization.**

Local governments.

Defined, §8-5-603.

MUNICIPAL UTILITIES.**Electricity.**

Air pollution, carbon dioxide emissions.

Emission plans, §§8-3-201 to 8-3-208.

N**NATURAL RESOURCES.****Hazardous waste management.**

Reclamation of resources, §§8-7-301 to 8-7-309.

NATURAL RESOURCES DAMAGES**TRUST FUND, §§8-12-101 to 8-12-105.****NEGLIGENCE.****Hazardous substance emergencies.**

Remedial action trust fund.

Liability.

Violations of act, §8-7-512.

NEWSPAPER RECYCLING**ADVISORY COMMITTEE,**

§§8-9-501 to 8-9-506.

Compliance schedule, §8-9-504.**Creation, §8-9-501.****Goals.**

Attainment, §8-9-505.

Members, §8-9-502.**Purpose, §8-9-503.**

Achievement, §8-9-506.

NEWSPAPERS.**Recycling advisory committee,**

§§8-9-501 to 8-9-506.

NIGHT SKY PROTECTION.**Shielded outdoor lighting, §§8-14-101 to 8-14-107.****NOTICE.****Controlled substances property contamination cleanup.**

Removal, §8-7-1405.

Hazardous substance emergencies.

Remedial action trust fund.

Violations of provisions.

Lien for expenditures and value of improvements, §8-7-516.

Hazardous waste management.

Procedure, §8-7-213.

NOTICE —Cont'd**Litter control.**

Junk cars, old tires or abandoned household appliances.

Authority to take possession of discarded items, §8-6-413.

Public notice required, §8-6-410.

Pollution.

Water pollution.

Commission.

Appeals.

Notice of appeal required, §8-4-223.

Application for permit.

General requirements, §8-4-203.

Orders.

Hearings prerequisite to issuance, §8-4-212.

Violation of provisions.

Hearings, §8-4-218.

Property assessed clean energy (PACE) program.

Notice to mortgage lender.

Applications to participate in program, §8-15-119.

Solid waste management.

Landfill and transfer station permits, issuance, §8-6-706.

NUISANCES.**Pollution.**

Public nuisance actions, §8-4-107.

O**OATHS OR AFFIRMATIONS.****Pollution.**

Pollution control and ecology commission.

Hearings and investigations.

Administering oaths.

Authority as to, §8-4-210.

OIL AND GAS.**Commission.**

Hydrogen sulfide emissions.

Ambient air quality standards, setting, §8-3-103.

Petroleum products tanks.

Storage tanks of regulated substances, §§8-7-801 to 8-7-817.

Storage tanks of regulated substances.

Petroleum products, §§8-7-801 to 8-7-817.

Tanks.

Storage tanks of regulated substances, §§8-7-801 to 8-7-817.

OIL AND GAS —Cont'd**Water pollution.**

Storage or application of fluids generated from exploration or production.

Closure of facilities, §8-4-203.

OPEN BURNING OF RESIDENTIAL YARD WASTE, §§8-6-1701 to 8-6-1704.

Definitions, §8-6-1701.

Private rights, §8-6-1704.

Restrictions, §8-6-1703.

State policy, §8-6-1702.

ORDERS.**Pollution.**

Air pollution.

Applicability of water pollution provisions, §8-4-304.

Commission.

Effectiveness of regulations or orders, §8-4-231.

Water pollution.

Commission.

Conclusiveness of commission actions, §8-4-213.

Hearings, §8-4-212.

Presumption of validity, §8-4-229.

Violation of provisions, §8-4-221.

Commission order without hearing, §8-4-221.

Solid waste management.

Unlawful dumping.

Effectiveness of regulations and orders, §8-6-510.

Removal order, §8-6-505.

ORDINANCES AND RESOLUTIONS.**Solid waste management.**

Local standards.

Authority of locality to set by ordinance, §8-6-209.

Wastewater privatization.

Definition of ordinance, §8-5-603.

OUTDOOR LIGHTING FIXTURES.

Shielded outdoor lighting, §§8-14-101 to 8-14-107.

P

PACE PROGRAM, §§8-15-101 to 8-15-119.

PESTICIDES.

Abandoned agricultural pesticide and plant regulator disposal trust fund.

Authorized uses, §8-7-1206.

PESTICIDES —Cont'd

Abandoned agricultural pesticide disposal, §§8-7-1201 to 8-7-1206.

Advisory board.

Composition, §8-7-1204.

Defined, §8-7-1203.

Duties, §8-7-1205.

Established, §8-7-1204.

Powers, §8-7-1205.

Citation of chapter, §8-7-1201.

Contractors.

Defined, §8-7-1203.

Definitions, §8-7-1203.

Plant regulators.

Defined, §8-7-1203.

Protection of citizens and environment.

Purpose, §8-7-1202.

Purpose, §8-7-1202.

State plant board.

Duties, §8-7-1206.

Title of chapter, §8-7-1201.

PETITIONS.

Motor vehicle racing facilities.

Consent to construction, §8-10-302.

Racing facilities for motor vehicles.

Consent to construction, §8-10-302.

PETROLEUM CONTAMINATED SOILS.

Solid waste management.

Disposal of incinerator ash and petroleum contaminated soils, §§8-6-1201 to 8-6-1207.

PETROLEUM PRODUCTS TANKS.

Adjacent property owner.

Interference with department, §8-7-807.

Bonds, surety.

Underground storage tanks.

Installation and testing licenses, §8-7-805.

Confidentiality of information, §8-7-909.

Construction and interpretation.

Storage tanks of regulated substances.

Rules and regulations.

Administrative procedure.

Applicability to procedures of department, §8-7-804.

Comity with federal regulations, §8-7-803.

Subchapter controlling over other laws, §8-7-812.

Definitions.

Storage tanks of regulated substances, §8-7-801.

PETROLEUM PRODUCTS TANKS

—Cont'd

Definitions —Cont'd

Storage tank trust fund, §8-7-902.

Fees.

Storage tank trust fund.

Petroleum environmental assurance fees, §8-7-906.

Fines.

Storage tanks of regulated substances.

Violations of subchapter, §8-7-806.

Registration violations, §8-7-813.

Funds.

Petroleum storage tank trust fund, §§8-7-901 to 8-7-909.

Storage tanks of regulated substances.

Storage tank program fund.

Establishment, §8-7-808.

Liability.

Storage tanks of regulated substances.

Owners.

Underground storage tanks.

Release of substance, §8-7-807.

Licenses.

Storage tanks of regulated substances.

Certification.

Installation or testing.

License required, §8-7-805.

Penalties.

Confidentiality of information.

Violations, §8-7-909.

Storage tanks of regulated substances.

Civil penalties.

Violations of subchapter, §8-7-806.

Registration violations, §8-7-813.

Public officers and employees.

Storage tanks of regulated substances.

Trade secrets.

Confidentiality of information.

Violation of section constitutes misdemeanor, §8-7-811.

Registration of storage tanks,

§8-7-813.

Rules and regulations.

Storage tanks of regulated substances, §8-7-802.

Administrative procedure.

Applicability to procedures of department, §8-7-804.

Construction and interpretation.

Comity with federal regulations, §8-7-803.

Subchapter controlling over other laws, §8-7-812.

PETROLEUM PRODUCTS TANKS

—Cont'd

Rules and regulations —Cont'd

Storage tanks of regulated substances

—Cont'd

Insurance pools.

Commissioner of insurance.

Adoption of regulations for the formation and operation of pools, §8-7-810.

Storage tank trust fund.

Department of finance and administration.

Director to adopt rules and regulations, §8-7-903.

Storage tank program fund.

Deposit of penalties, §8-7-806.

Storage tanks of regulated substances, §8-7-808.

Deposits.

Civil penalties collected under this section, §8-7-806.

Cost recovered from owners and operators by department, §8-7-807.

Storage tanks of regulated**substances,** §§8-7-801 to 8-7-817.

Commission.

Powers and duties, §8-7-802.

Procedures, §8-7-804.

Construction and interpretation.

Rules and regulations.

Administrative procedure.

Applicability to procedures of department, §8-7-804.

Comity with federal regulations, §8-7-803.

Subchapter controlling over other laws, §8-7-812.

Corrective actions, §8-7-809.

Definitions, §8-7-801.

Delivery prohibition.

Tanks identified as ineligible for fuel delivery or deposit, §8-7-814.

Department.

Defined, §8-7-801.

Director.

Orders of director, §8-7-809.

Compliance, §8-7-809.

Enforcement, §8-7-809.

Powers and duties, §8-7-802.

Procedures generally, §8-7-804.

Insurance pools.

Formation and operation, §8-7-810.

PETROLEUM PRODUCTS TANKS

—Cont'd

Storage tanks of regulated substances —Cont'd

Liability.

Owners.

Underground storage tanks.

Release of substance, §8-7-807.

Misdemeanors.

Trade secrets.

Confidentiality of information.

Violations of section, §8-7-811.

Motor fuel dispenser systems.

Under-dispenser spill containment.

New or replaced systems,
§8-7-816.

New tanks or piping.

Secondarily contained and
monitored for leaks, §8-7-816.Operation and maintenance of
systems.

Training for operators, §8-7-817.

Operators.

Defined, §8-7-801.

Insurance pools.

Financial responsibility, §8-7-810.

Owners.

Defined, §8-7-801.

Insurance pools.

Financial responsibility, §8-7-810.

Liability.

Underground storage tanks.

Release of substance, §8-7-807.

Release site property owners.

Defined, §8-7-801.

Investigations, assessment,
corrective actions, §8-7-807.

Penalties.

Civil penalties.

Violations of subchapter, §8-7-806.

Registration violations,
§8-7-813.

Public officers and employees.

Trade secrets.

Confidentiality of information.

Violation of section constitutes
misdemeanor, §8-7-811.

Registration, §8-7-813.

Release site property owners.

Defined, §8-7-801.

Investigations, assessment,
corrective actions, §8-7-807.

Replaced tanks or piping.

Secondarily contained and
monitored for leaks, §8-7-816.

Rules and regulations, §8-7-802.

Administrative procedure.

Applicability to procedures of
department, §8-7-804.**PETROLEUM PRODUCTS TANKS**

—Cont'd

Storage tanks of regulated substances —Cont'd

Rules and regulations —Cont'd

Construction and interpretation.

Comity with federal regulations,
§8-7-803.Subchapter controlling over other
laws, §8-7-812.

Insurance pools.

Commissioner of insurance.

Adoption of regulations for the
formation and operation of
pools, §8-7-810.

Secondary containment, §8-7-816.

Defined, §8-7-801.

Storage tank program fund.

Deposits.

Civil penalties collected by
department, §8-7-806.Costs recovered by department
from owners, §8-7-807.

Establishment, §8-7-808.

Tank identified as ineligible for fuel
delivery or deposit.Unlawful to deliver to, deposit into
or accept substances, §8-7-814.

Trade secrets.

Confidentiality of information.

Violation of section constitutes
misdemeanor, §8-7-811.Training in operation and
maintenance of systems.

Operators, §8-7-817.

Under-dispenser spill containment.

Motor fuel dispenser systems.

New or replaced systems,
§8-7-816.

Underground storage tanks.

Bonds, surety.

Installation and testing licenses,
§8-7-805.

Certification.

Installation or testing, §8-7-805.

Defined, §8-7-801.

Liability and responsibility of
owners.

Release of substance, §8-7-807.

License requirements, §8-7-805.

Storage tank trust fund.

Administration, §8-7-905.

Advisory committees.

Appointment, §8-7-904.

Composition, §8-7-904.

Defined, §8-7-902.

Establishment, §8-7-904.

Officers, §8-7-904.

PETROLEUM PRODUCTS TANKS

—Cont'd

Storage tank trust fund —Cont'd

Appeals, §8-7-905.

Citation of title, §8-7-901.

Corrective action.

Payments, §8-7-907.

Definitions, §8-7-902.

Deposit of moneys, §8-7-905.

Expenditures, §8-7-905.

Fees.

Collection.

Enforcement, §8-7-906.

Petroleum environmental assurance fees, §8-7-906.

Payments for corrective action, §8-7-907.

Purchase of equipment needed to undertake corrective action, §8-7-907.

Purpose, §8-7-905.

Rules and regulations.

Department of finance and administration.

Director to adopt rules and regulations, §8-7-903.

Third parties.

Claims of third parties, §8-7-908.

Payment of claims, §8-7-908.

Title of subchapter, §8-7-901.

Transfer of responsibility for corrective action payments, §8-7-907.

Transfer of responsibility for third-party claims, §8-7-908.

Unknown petroleum storage tanks. Reimbursement for third-party claims.

Eligibility for, §8-7-908.

Third party claims.

Storage tank trust fund, §8-7-908.

Trade secrets.

Storage tanks of regulated substances.

Confidentiality of information.

Violation of section constitutes misdemeanor, §8-7-811.

Underground storage tanks.

Storage tanks of regulated substances, §§8-7-801 to 8-7-817.

PHASE I ENVIRONMENTAL SITE ASSESSMENT CONSULTANTS.**List maintained by department of environmental quality, §§8-7-1301 to 8-7-1304, 8-7-1311.****PIPELINES.****Oil and gas.**

Surface water supply protection.

Petroleum pipelines crossing watercourses.

Cut-off valve and training, §8-10-404.

Risk mitigation and response plan, §8-10-405.

Waters and watercourses.

Surface water supply protection.

Petroleum pipelines crossing watercourses.

Cut-off valve and training, §8-10-404.

Risk mitigation and response plan, §8-10-405.

PLANNING.**Solid waste management.**

Municipal solid waste management systems, §8-6-211.

Statewide solid waste management plan, §§8-6-1901 to 8-6-1904.

Statewide solid waste management plan act, §§8-6-1901 to 8-6-1904.**POLLUTION.****Abandoned agricultural pesticide disposal, §§8-7-1201 to 8-7-1206.****Actions.**

Chronic noncompliance, §8-5-702.

Public nuisance actions.

Prosecution, §8-4-107.

Administrative law judges.

Employment by commission, §§8-1-203, 8-1-204.

Agriculture.

Abandoned agricultural pesticide

disposal, §§8-7-1201 to 8-7-1206.

Alternative methods of compliance.

Environmental regulatory flexibility, §§8-11-101 to 8-11-103.

Animal waste, §8-6-1801.

Water pollution, permits.

Liquid animal waste management system, §8-4-203.

Appeals.

Permits.

Denial of application, §8-1-106.

Audits and auditors.

Environmental audit reports, §§8-1-301 to 8-1-312.

POLLUTION —Cont'd**Chronic noncompliance.**

- Ability to cover costs of operating system.
- Financial assurance requirements, §8-5-703.
- Actions for violations, §8-5-702.
- Common sewage system serving 2 or more lots or dwellings.
- Financial ability to cover operating, maintenance and replacement costs.
- Required for permit issuance, §8-5-703.
- Damages, §8-5-702.
- Definitions, §8-5-701.
- Financial assurance requirements, §8-5-703.
- Fines, §8-5-702.
- Injunctions for violations, §8-5-702.
- Order to cut off flow of potable water, §8-5-702.
- Penalties, §8-5-702.
- Receivers, appointment by department, §8-5-702.
- Registration of sewage system.
- Application to be accompanied by financial assurance, §8-5-703.
- Remedies for violations, §8-5-702.
- Revocation of permit for violations, §8-5-702.

Commission.

- Administrative law judges.
- Employment, §§8-1-203, 8-1-204.
- Composition, §8-4-104.
- Cooperation with agency or other states or United States, §8-4-215.
- Director.
- Appointment, §8-4-105.
- Disposal systems.
- Authority as to, §8-4-105.
- Head of the divisions of the department.
- Appointment.
- Authority as to, §8-4-105.
- Personnel.
- Authority as to, §8-4-105.
- Technical services and public assistance.
- Authority as to, §8-4-106.
- Effectiveness of regulations or orders, §8-4-231.
- Environmental regulatory flexibility, §§8-11-101 to 8-11-103.
- Interim authority to operate during public notice period, §8-4-230.
- Legislative intent.
- Delineation of responsibility, §8-1-201.

POLLUTION —Cont'd**Commission —Cont'd**

- Long-term environmental projects, §§8-5-901 to 8-5-905.
- Meetings, §8-4-104.
- Members, §8-4-104.
- Alternative representative, §8-4-104.
- Expenses.
- Reimbursement for travel and maintenance expenses, §8-4-104.
- Term, §8-4-104.
- Mercury switch removal act.
- Rules and regulations, §8-9-609.
- Nutrient water quality trading programs.
- Advisory panel, §8-4-233.
- Regulations regarding, §8-4-232.
- Phase I environmental site assessment consultants.
- List maintained by department.
- Rules, promulgation, §8-7-1304.
- Powers, §8-1-203.
- Delineation of powers, §8-1-201.
- Responsibilities, §8-1-203.
- Delineation of responsibility, §8-1-201.
- Technical services and public assistance.
- Generally, §8-4-106.
- Underground salt water disposal systems.
- Chlorides standard, §8-5-504.
- Regulation of systems.
- Authority as to, §8-5-501.
- Used tire recycling and accountability.
- Powers and duties of commission, §8-9-414.
- Variances, §8-4-230.
- Compacts.**
- Environmental compact, §§8-8-101 to 8-8-103.
- Compliance advisory panel, §8-4-314.**
- Controlled substances contaminated property cleanup, §§8-7-1401 to 8-7-1407.**
- Cooperation with agencies of other states or United States, §8-4-215.**
- County solid waste management system aid fund, §§8-6-301 to 8-6-307.**
- Criminal offenses.**
- Administrative inspections.
- Refusal of right of entry to department personnel, §8-1-107.
- Underground salt water disposal systems, §8-5-502.

POLLUTION —Cont'd**Criminal offenses —Cont'd**

Wastewater treatment plants,
§8-5-202.

Water pollution, §8-4-103.

Criminal procedure.

Nuisances.

Prosecution of public nuisance
actions, §8-4-107.

Damages.

Chronic noncompliance, §8-5-702.

Definitions, §8-4-102.

Disclosure statements, §8-1-106.

Fees, §8-1-102.

Investigations or inspections, §8-1-107.

Prevention of pollution, §8-10-203.

**Department of environmental
quality.**

Animal waste, §8-6-1801.

Director.

Powers, §8-1-202.

Delineation of responsibility,
§8-1-201.

Environmental performance
indicators, §8-13-103.

Environmental regulatory flexibility,
§§8-11-101 to 8-11-103.

Integrated agency information system,
§8-13-103.

Legislative intent.

Delineation of responsibility,
§8-1-201.

Long-term environmental projects,
§§8-5-901 to 8-5-905.

Management organization, §§8-13-101
to 8-13-103.

Alternative organization, authority
to establish, §8-13-102.

Comprehensive analysis,
requirements, §8-13-103.

Divisions, authority to establish,
§8-13-102.

Environmental performance
indicators, §8-13-103.

Goals, §8-13-101.

Integrated agency information
system, §8-13-103.

Performance-based financial
management system, §8-13-103.

Purpose of chapter, §8-13-101.

Strategic plan, contents, §8-13-103.

Performance-based financial
management system, §8-13-103.

Permits, §8-4-203.

Revocation, §8-4-204.

POLLUTION —Cont'd**Department of environmental
quality —Cont'd**

Phase I environmental site assessment
consultants.

List maintained by department,
§§8-7-1301 to 8-7-1304,
8-7-1311.

Powers and duties, §8-4-201.

Reorganization into functional areas,
§§8-13-101 to 8-13-103.

Small business revolving loan fund,
§§8-5-801 to 8-5-808.

Voluntary environmental stewardship
program, §8-1-206.

Disposal systems.

Underground salt water disposal
systems, §§8-5-501 to 8-5-504.

Water pollution, §8-4-102.

Information to be submitted to
department.

General requirements, §8-4-216.

Dumping.

Unlawful dumping.

Definitions, §8-6-503.

Penalties, §8-6-506.

Proceedings against unlawful
dumping.

Generally, §8-6-505.

Purpose of act, §8-6-502.

Sanctions for unpaid fines and costs,
§8-6-506.

Short title, §8-6-501.

Environmental audit reports,

§§8-1-301 to 8-1-312.

**Environmental compact, §§8-8-101 to
8-8-103.****Environmental laboratory
accreditation.**

General provisions, §§8-2-201 to
8-2-209.

**Environmental performance
indicators.**

Department management organization
authority, §8-13-103.

Environmental regulatory flexibility,

§§8-11-101 to 8-11-103.

Alternative methods of compliance,
§8-11-103.

Citation of chapter, §8-11-101.

Policy of state, §8-11-102.

Purpose of chapter, §8-11-102.

Title of chapter, §8-11-101.

Violations of orders, §8-11-103.

Fees.

Temporary variances or interim
authority request, §8-4-230.

POLLUTION —Cont'd**Fines.**

Chronic noncompliance, §8-5-702.

Funds.

Natural resources damages trust fund,
§§8-12-101 to 8-12-105.

General assembly.

Air quality areas.

Designation.

General assembly sole authority,
§8-3-101.

General permits, §8-4-203.**Industrial waste.**

Water pollution.

Definition of industrial waste,
§8-4-102.

Injunctions.

Chronic noncompliance, §8-5-702.

Water pollution, §8-4-103.

Innovative technology.

Environmental regulatory flexibility,
§§8-11-101 to 8-11-103.

Inspections.

Permits.

Inspection warrant, §8-1-107.

Integrated agency information system.

Department management organization
authority, §8-13-103.

Interim authority to operate during public notice period, §8-4-230.**Interstate compacts.**

Environmental compact, §§8-8-101 to
8-8-103.

Investigations.

Permits, §8-1-107.

Litter control.

General provisions, §§8-6-401 to
8-6-418.

Medical waste incineration

facilities, §§8-6-1301 to 8-6-1307.

Motor vehicle racing facilities.

Permits, §8-10-303.

Motor vehicles.

Racing facilities.

Construction, §8-10-302.

National pollutant discharge elimination system permit.

Financial prerequisites to issuance,
§8-4-203.

Natural resources damages trust fund, §§8-12-101 to 8-12-105.

Board.

Composition, §8-12-104.

Defined, §8-12-102.

Establishment, §8-12-104.

Powers and duties, §8-12-104.

Citation of chapter, §8-12-101.

POLLUTION —Cont'd**Natural resources damages trust fund —Cont'd**

Defined terms, §8-12-102.

Establishment of fund, §8-12-103.

Expenditures.

Authorization, §8-12-103.

Finance and administration
department.

Duties, §8-12-105.

Sources of funds, §8-12-103.

Title of chapter, §8-12-101.

Noise pollution.

Motor vehicle racing facilities,
§8-10-302.

Nuisances.

Public nuisance actions.

Prosecution, §8-4-107.

Penalties.

Chronic noncompliance, §8-5-702.

Permits.

Investigations or inspections,
§8-1-107.

Underground salt water disposal
systems.

Violation of provisions, §8-5-502.

Water pollution, §8-4-103.

Performance-based financial management system.

Department management organization
authority, §8-13-103.

Permits.

Appeals.

Denial of application, §8-1-106.

Application.

Denial of application, §8-1-106.

Disclosure statements.

Definitions, §8-1-106.

Fees.

Collection, §8-1-103.

Definitions, §8-1-102.

Fund, §8-1-105.

Powers and duties of department
and commission, §8-1-103.

Purpose of act, §8-1-101.

Rules and regulations, §8-1-103.

Existing provisions, §8-1-104.

General permits, issuance by
department, §8-4-203.

Investigations or inspections.

Definitions, §8-1-107.

Inspection warrant, §8-1-107.

National pollutant discharge
elimination system permit.

Financial prerequisites to issuance,
§8-4-203.

Penalties.

Investigations or inspections,
§8-1-107.

POLLUTION —Cont'd**Permits —Cont'd**

- Rulemaking authority, §8-1-106.
- Underground salt water disposal systems.
 - Commission.
 - Authority as to permits, §8-5-501.
 - Requirements as to, §8-5-501.

Pesticides.

- Abandoned agricultural pesticide disposal, §§8-7-1201 to 8-7-1206.

Prevention, §§8-10-201 to 8-10-405.

- Batteries.
 - Sale and disposal, §8-10-301.
- Definitions, §8-10-203.
- Duty to effectuate, §8-10-205.
- Legislative intent, §8-10-202.
- Motor vehicle racing facilities, §§8-10-303, 8-10-304.
- Power to effectuate, §8-10-205.
- Short title of act, §8-10-201.
- Surface water supply protection, §§8-10-401 to 8-10-405.
- Waste minimization hierarchy, §8-10-204.

Receivers.

- Chronic noncompliance.
 - Appointment of receiver to sewage system, §8-5-702.

Reports.

- Environmental audit reports, §§8-1-301 to 8-1-312.

Salt water.

- Underground salt water disposal systems, §§8-5-501 to 8-5-504.

Sewage.

- Chronic noncompliance, §§8-5-701 to 8-5-703.
- Defined, §8-4-102.

Small business revolving loan fund,

- §§8-5-801 to 8-5-808.
- Administration of program, §8-5-808.
- Creation of fund, §8-5-807.
- Definitions, §8-5-803.
- Eligible activities, §8-5-804.
- Eligible participants, §8-5-805.
- Interest, §§8-5-806, 8-5-807.
- Maximum loan amount, §8-5-806.
- Purpose, §§8-5-802, 8-5-804.
- Terms of revolving loan, §8-5-806.
- Title, §8-5-801.

Solid waste management.

- General provisions, §§8-6-201 to 8-6-510.

Taxation.

- Underground salt water disposal systems.
 - Denial of tax deductions.
 - Grounds, §8-5-503.

POLLUTION —Cont'd**Temporary variances, §8-4-230.****Treatment works.**

- Water pollution.
 - Definition of treatment works, §8-4-102.

Underground salt water disposal systems.

- Certificate of approval.
 - Required, §8-5-501.
- Chlorides standard, §8-5-504.
- Commission.
 - Chlorides standard, §8-5-504.
 - Regulation of systems.
 - Authority as to, §8-5-501.

Permits.

- Requirements as to, §8-5-501.
- Regulation of systems.
 - Generally, §8-5-501.
- Standard for chlorides, §8-5-504.
- Violation of provisions.
 - Penalty, §8-5-502.

United States.

- Commission.
 - Cooperation with agencies of other states or United States, §8-4-215.

Variances.

- Granting by director, §8-4-230.

Voluntary environmental**stewardship program, §8-1-206.****Wastewater plant operators,**

§§8-5-201 to 8-5-209.

Wastewater privatization, §§8-5-601 to 8-5-612.**POPULAR NAMES AND SHORT TITLES.****Environmental laboratory**

accreditation program act, §8-2-201.

Mercury switch removal act,

§§8-9-601 to 8-9-610.

PACE program, §§8-15-101 to 8-15-119.**Public employees' chemical right to know, §§8-7-1001 to 8-7-1016.****Public surface water supply protection act, §§8-10-401 to 8-10-405.****Statewide solid waste management plan act, §§8-6-1901 to 8-6-1904.****Used tire recycling and accountability act, §8-9-401.****PRESUMPTIONS.****Pollution.**

- Water pollution.
 - Rules, orders, etc., presumed valid, §8-4-229.

PRESUMPTIONS —Cont'd**Solid waste management.**

Siting of facilities, §8-6-1504.

Unlawful actions.

Rebuttable presumptions, §8-6-205.

PREVENTION TECHNOLOGIES.**Small business revolving loan fund for pollution control and prevention technologies, §§8-5-801 to 8-5-808.****PRIVATIZATION OF WASTEWATER PROJECTS.****General provisions, §§8-5-601 to 8-5-612.****PRIVILEGES.****Environmental audit reports.**

Applicability, §8-1-309.

Burden of proof of party asserting privilege, §8-1-310.

Creation of privilege, §8-1-303.

Effect of chapter, §8-1-312.

Exceptions to privilege, §8-1-305.

Partial disclosures, §8-1-311.

Required disclosures in civil or administrative proceedings, §8-1-307.

Stipulation to waiver of privilege regarding certain information, §8-1-306.

Waiver of privilege, §8-1-304.

PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM, §§8-15-101 to 8-15-119.**Agreement.**

Terms and conditions, §8-15-106.

Assessments.

Authority to assess, §8-15-111.

Collection, §8-15-112.

Payment of bonds, §8-15-115.

Authority to create, §8-15-105.**Board of directors.**

Duties, §8-15-111.

Established, §8-15-107.

Guidelines, development, §8-15-114.

Management and control of district, §8-15-107.

Meetings, §8-15-110.

Members, §8-15-108.

Powers, §8-15-111.

Representation, §8-15-108.

Terms, §8-15-109.

Bond issues.

Assessments, payment of bonds, §8-15-115.

Financing projects, §8-15-113.

Issuance, §8-15-116.

PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM

—Cont'd

Bond issues —Cont'd

Sale, §8-15-117.

Citation of chapter, §8-15-101.**Collection of assessments, §8-15-112.****Creation, §8-15-105.****Definitions, §8-15-102.****Expenses, reimbursement.**

Board of directors, §8-15-107.

Financing projects, §8-15-113.

Revolving fund, §8-15-118.

Guidelines, development, §8-15-114.**Immunity, §8-15-104.****Joining an existing district, §8-15-106.****Legislative findings, §8-15-103.****Loan programs.**

Financing projects, §8-15-113.

Meetings.

Board of directors, §8-15-110.

Notice to mortgage lender.

Applications to participate in program, §8-15-119.

Public purpose and necessity, §8-15-104.**Purpose, §8-15-103.****Reports.**

Collection of assessments, §8-15-112.

Revolving fund, §8-15-118.**Title, §8-15-101.****PUBLIC EMPLOYEES' CHEMICAL RIGHT TO KNOW, §§8-7-1001 to 8-7-1016.****Actions.**

Civil action for enforcement of rights, §8-7-1015.

Adverse personnel actions.

Violations of provisions, §8-7-1014.

Appeals.

Action to enforce rights, §8-7-1015.

Attorneys' fees.

Action to enforce rights, §8-7-1015.

Cease and desist orders.

Enforcement of act, §8-7-1014.

Citation of title, §8-7-1001.**Complaints.**

Investigation by director, §8-7-1013.

Construction and interpretation.

No effect on other legal duties, §8-7-1016.

Contempt.

Refusal to comply with court orders, §8-7-1015.

Definitions, §8-7-1003.**Disciplinary actions.**

Violations of provisions, §8-7-1014.

**PUBLIC EMPLOYEES' CHEMICAL
RIGHT TO KNOW —Cont'd****Duties of public employers,**
§8-7-1004.

No effect on other legal duties,
§8-7-1016.

**Employee information and training
program.**

Establishment, §8-7-1008.

Outreach activities of director,
§8-7-1009.

Enforcement of act, §8-7-1014.

Violations of provisions, §8-7-1014.

Evidence.

Cease and desist orders.

Prima facie evidence of violation,
§8-7-1014.

Injunctions.

Violations of provisions, §8-7-1014.

Investigations.

Complaints.

Timely investigation by director,
§8-7-1013.

Labeling requirements, §8-7-1005.**Legislative findings, §8-7-1002.****Material safety data sheets.**

Employee information and training
program, §8-7-1008.

Requirements, §8-7-1006.

Outreach activities of director,
§8-7-1009.**Purpose of act, §8-7-1002.****Recordkeeping requirements.**

Employee information and training
program, §8-7-1008.

Material safety data sheets, §8-7-1006.

Outreach activities of director,
§8-7-1009.

Workplace chemical lists, §8-7-1007.

Remedies.

Enforcement of act, §§8-7-1014,
8-7-1015.

Rights of public employees,
§8-7-1010.

Employee information and training
program, §8-7-1008.

Rulemaking authority, §8-7-1011.**Title of act, §8-7-1001.****Trade secrets.**

Conditions for withholding specific
chemical identification, §8-7-1012.

Disclosure requirements, §8-7-1012.

Workplace chemical lists.

Employee information and training
program, §8-7-1008.

Requirements, §8-7-1007.

PUBLIC FUNDS.**Abandoned agricultural pesticide
and plant regulator disposal
fund, §8-7-1206.****Arkansas department of
environmental quality fee trust
fund, §8-1-105.****Hazardous substance emergencies.**

Remedial action trust fund, §§8-7-501
to 8-7-525.

Hazardous waste permit fund.

Creation, §8-7-226.

**Natural resources damages trust
fund, §§8-12-101 to 8-12-105.****Petroleum products.**

Storage tanks of regulated substances.

Storage tank program fund.

Establishment, §8-7-808.

Pollution.

Natural resources damages trust fund,
§§8-12-101 to 8-12-105.

Small business revolving loan fund,
§§8-5-801 to 8-5-808.**Solid waste management.**

Landfill post-closure trust fund,
§§8-6-1001 to 8-6-1005.

Management and recycling fund,
§§8-6-601 to 8-6-611.

Solid waste performance bond fund.

Financial assurance, §8-6-1604.

Storage tank program fund.

Storage tanks of regulated substances,
§8-7-808.

Trust funds.

Petroleum storage tank trust fund,
§§8-7-901 to 8-7-909.

**PUBLIC OFFICERS AND
EMPLOYEES.****Hazardous chemical right to know
act, §§8-7-1001 to 8-7-1016.****Trade secrets.**

Petroleum products.

Storage tanks of regulated
substances.

Confidentiality of information.

Violation of section constitutes
misdemeanor, §8-7-811.

PUBLIC SERVICE COMMISSION.**Property assessed clean energy
(PACE) program, §§8-15-101 to
8-15-119.****Wastewater privatization.**

Contracts for privatization and service
agreements.

Exemption from jurisdiction of
commission, §8-5-610.

PUBLIC UTILITIES.**Electric utilities.**

- Air pollution, carbon dioxide emissions.
- Emission plans, §§8-3-201 to 8-3-208.

Outdoor lighting fixtures.

- Shielded outdoor lighting.
- Duties of electric public utilities, §8-14-104.

Shielded outdoor lighting.

- Duties of electric public utilities, §8-14-104.

Q**QUICKSILVER.****Mercury switch removal from motor vehicles, §§8-9-601 to 8-9-610.****R****RACING.****Motor vehicles.**

- Construction of racing facilities, §8-10-302.
- Municipal corporations.
- Racing facilities in certain municipalities, §8-10-304.

RADIATION CONTROL.**Central interstate low-level radioactive waste compact.**

- Commission.
- State agencies to cooperate with, §8-8-205.
- State member and alternate, §8-8-203.
- Appointment, §8-8-203.
- Terms, §8-8-203.
- Conflict of laws.
- Compact provisions controlling, §8-7-604.
- Cooperation by state agencies with compact commission, §8-8-205.
- Penalties.
- Violations, §8-8-201.
- Regional facility.
- Approval of disposal rates, §8-8-206.
- Text of compact, §8-8-202.
- Violations.
- Penalties, §8-8-201.

Conflict of laws.

- Low-level radioactive waste.
- Compact provisions controlling, §8-7-604.

Definitions.

- Low-level radioactive waste, §8-7-601.

RADIATION CONTROL —Cont'd**Low-level radioactive waste.**

- Conflict of laws.
- Compact provisions controlling, §8-7-604.
- Definitions, §8-7-601.
- Facilities for disposal or storage.
- Above-ground facilities, §8-7-602.
- Defined, §8-7-601.
- Requirements, §8-7-602.
- Approval, §8-7-603.
- Permits.
- Issuance, §8-7-603.

Penalties.

- Central interstate low-level radioactive waste compact, §8-8-201.

Pollution.

- Air pollution.
- Radiation law not amended or repealed by air pollution provisions, §8-4-309.

RECEIVERS.**Pollution.**

- Chronic noncompliance.
- Appointment of receiver to sewage system, §8-5-702.

RECORDS.**Controlled substances.**

- Contaminated property cleanup, §8-7-1404.

Hazardous waste management.

- Maintaining records.
- Misdemeanors for violations, §8-7-225.
- Requirements, §8-7-225.

Public employees' chemical right to know act.

- Recordkeeping requirements.
- Employee information and training program, §8-7-1008.
- Material safety data sheets, §8-7-1006.
- Outreach activities of director, §8-7-1009.
- Workplace chemical lists, §8-7-1007.

RECYCLING.**Computer and electronic equipment recycling program, §8-6-613.****Hazardous substance emergencies, §8-7-524.****Local governments.**

- Solid waste disposal.
- General provisions, §§8-9-101 to 8-9-415.

Newspaper recycling advisory

- committee, §§8-9-501 to 8-9-506.**

RECYCLING —Cont'd**Regional recycling programs.**

Unlawfully diverting recyclable materials, §§8-6-720.

Solid waste management.

General provisions, §§8-9-101 to 8-9-415.

Management and recycling fund, §§8-6-601 to 8-6-611.

Theft of recyclable materials.

Regional recycling programs.

Unlawfully diverting recyclable materials, §8-6-720.

REFUSE.**Litter control.**

General provisions, §§8-6-401 to 8-6-418.

Solid waste management.

General provisions, §§8-6-201 to 8-6-510.

REPORTS.**Air pollution.**

Emission plans.

Report required prior to petition to initiate rulemaking, §8-3-205.

Controlled substances.

Contaminated properties through manufacture of substances, §8-7-1403.

Environmental audit reports,

§§8-1-301 to 8-1-312.

Pollution.

Environmental audit reports, §§8-1-301 to 8-1-312.

Property assessed clean energy (PACE) program.

Collection of assessments, §8-15-112.

RESIDENTIAL YARD WASTE.

Open burning, §§8-6-1701 to 8-6-1704.

RESOURCE RECLAMATION.

Hazardous waste management, §§8-7-301 to 8-7-309.

RIGHT OF ENTRY.**Solid waste management.**

Inspections, §8-6-214.

RIGHT TO KNOW.

Public employees' chemical right to know, §§8-7-1001 to 8-7-1016.

S**SALES.****Litter control.**

Junk cars, old tires and abandoned household appliances, §8-6-415.

SALT WATER.**Pollution.**

Underground salt water disposal systems, §§8-5-501 to 8-5-504.

SERVICE OF NOTICE, PROCESS AND OTHER PAPERS.**Pollution.**

Water pollution.

Commission.

Service of notice, orders or other instruments issued.

Authority as to, §8-4-214.

SHIELDED OUTDOOR LIGHTING,

§§8-14-101 to 8-14-107.

Citation of act, §8-14-101.

Definitions, §8-14-103.

Electric public utilities.

Duties, §8-14-104.

Exemptions from act, §8-14-104.

Injunctions.

Enforcement of act, §8-14-106.

Penalties for violations, §8-14-105.

Public funds.

Restrictions on use, §8-14-104.

Purpose of act, §8-14-102.

Supplemental nature of provisions, §8-14-107.

Title of act, §8-14-101.

SIGNS.**Outdoor lighting.**

Shielded outdoor lighting, §§8-14-101 to 8-14-107.

SMALL BUSINESSES.

Revolving loan fund for pollution control and prevention technologies, §§8-5-801 to 8-5-808.

SOLID WASTE MANAGEMENT.**Actions.**

Private right of action not obviated by subchapter, §8-6-206.

Violation of subchapter.

Private right of action, §8-6-206.

Animal waste, §8-6-1801.

Assessments.

Regional planning districts and boards.

Needs assessments, §8-6-705.

Bond issues.

Construction of provisions, §8-6-802.

County or municipality.

Transfer of facilities to district, §8-6-814.

Default, §8-6-806.

Regional planning districts and boards, §8-6-806.

Definitions, §8-6-801.

SOLID WASTE MANAGEMENT

—Cont'd

Bond issues —Cont'd

Execution, §8-6-804.

Investments, §8-6-813.

Regional planning districts and boards, §8-6-813.

Issuance, §8-6-804.

Refunding bonds, §8-6-808.

Liability, §8-6-807.

Liberal construction of provisions, §8-6-802.

Regional planning districts and boards, §8-6-802.

Payment and security, §8-6-807.

Personal liability, §8-6-807.

Pledge of rents, fees and charges, §§8-6-803, 8-6-809.

Refunding bonds.

Issuance, §8-6-808.

Regional planning districts and boards, §8-6-808.

Regional planning districts and boards, §§8-6-801 to 8-6-814.

Restriction on local government bonds and pledges, §8-6-713.

Rights of bondholders, §8-6-810.

Sale, §8-6-804.

Status of property and income of district.

Tax exempt status, §§8-6-811, 8-6-812.

Regional planning districts and boards, §8-6-811.

Transfer of facilities to district, §8-6-814.

Trust indenture, §8-6-805.

Certificate of need.

Household hazardous waste storage or processing centers, §8-6-223.

Required before issuing landfill permit or transfer station permit, §8-6-706.

Commercial medical waste.

Incineration facilities, §§8-6-1301 to 8-6-1307.

Commission.

Disposal of incinerator ash and petroleum contaminated soils.

Administration and enforcement of subchapter, §8-6-1204.

Powers and duties, §8-6-1204.

Rulemaking authority, §8-6-1204.

Duties, §8-6-207.

Powers, §8-6-207.

Residential use of landfills.

Powers and duties, §8-6-1402.

Rules and regulations, §8-6-1403.

SOLID WASTE MANAGEMENT

—Cont'd

Composting.

Regional composting program.

Establishment by board, §8-6-719.

Computer recycling and electronic solid waste, §8-6-613.**Conflict of laws.**

Recycling.

Conflict with federal laws, §8-9-103.

Construction and interpretation.

Applicants for new permits, §8-6-219.

Disposal of incinerator ash and petroleum contaminated soils.

Inapplicability of subchapter, §8-6-1202.

Legislative intent, §8-6-1201.

Landfill service areas.

Applicability of subchapter.

Expansion outside district, §8-6-1105.

Construction of subchapter, §8-6-1102.

Legislative findings, §8-6-1101.

Purpose of subchapter, §8-6-1101.

Management and recycling fund.

Subchapter to be construed liberally, §8-6-602.

Recycling.

Construction of chapter.

Liberal construction, §8-9-102.

Policy goals, §8-9-101.

Regional planning districts and boards.

Subchapter to be construed liberally, §8-6-701.

Sanitary landfills.

Licensing policy, §8-6-907.

Contracts.

Regional planning districts and boards.

Agreements implementing subchapter, §8-6-709.

Counties.

Agreements among localities authorized, §8-6-210.

Local standards, §8-6-209.

Management systems.

County solid waste management systems, §8-6-212.

Aid fund.

Allocation of funds to counties, §8-6-303.

Definitions, §8-6-301.

Distribution formula, §8-6-303.

Eligibility to receive funds, §8-6-304.

Established, §8-6-302.

SOLID WASTE MANAGEMENT

—Cont'd

Counties —Cont'd

Management systems —Cont'd

County solid waste management systems —Cont'd

Aid fund —Cont'd

Failure to use funds, §8-6-305.

Misuse of funds, §8-6-305.

Reapportionment, §8-6-306.

Transfers, §8-6-307.

Authority of county to provide, §8-6-212.

Requirements of county to provide, §8-6-212.

County solid waste management system aid fund.

Allocation of funds to counties, §8-6-303.

Distribution formula, §8-6-303.

Definitions, §8-6-301.

Eligibility to receive funds, §8-6-304.

Establishment, §8-6-302.

Failure to use funds, §8-6-305.

Misuse of funds, §8-6-305.

Reapportionment of funds, §8-6-306.

Transfers of funds, §8-6-307.

Declaration of policy, §8-6-202.

Pollution prevention, §8-10-202.

Residential use of landfills, §8-6-1401.

Siting high-impact solid waste management facilities, §8-6-1501.

Definitions, §8-6-203.

County solid waste management system aid fund, §8-6-301.

Disposal of incinerator ash and petroleum contaminated soils, §8-6-1203.

Landfill post-closure trust fund, §8-6-1001.

Landfill service areas, §8-6-1103.

Management and recycling fund, §8-6-603.

Pollution prevention, §8-10-203.

Recyclable items, §8-9-301.

Recycling, §8-9-104.

Regional planning districts and boards, §8-6-702.

Sanitary landfills, §8-6-901.

Siting high-impact solid waste management facilities, §8-6-1502.

Statewide solid waste management plan, §8-6-1903.

Unlawful dumping, §8-6-503.

Used tires, §8-9-402.

Yard waste, §8-6-220.

SOLID WASTE MANAGEMENT

—Cont'd

Disposal of incinerator ash and petroleum contaminated soils, §§8-6-1201 to 8-6-1207.

Adoption of disposal criteria.

Incinerator ash, §8-6-1206.

Petroleum contaminated soils, §8-6-1205.

Definitions, §8-6-1203.

Establishment of disposal criteria.

Incinerator ash, §8-6-1206.

Petroleum contaminated soils, §8-6-1205.

Inapplicability of subchapter, §8-6-1202.

Legislative intent, §8-6-1201.

Penalties for violations of provisions, §8-6-1207.

Pollution control and ecology commission.

Administration and enforcement of subchapter, §8-6-1204.

Powers and duties, §8-6-1204.

Rulemaking authority, §8-6-1204.

Public policy declaration, §8-6-1201.

Violations of provisions, §8-6-1207.

Disposal sites.

Defined, §8-6-203.

Landfill permits, §8-6-706.

Management and recycling fund.

“Landfill” defined, §8-6-603.

Penalties, §8-6-204.

Prohibited acts, §8-6-205.

Regional planning districts and boards.

“Landfill” defined, §8-6-702.

Residential use of landfills, §§8-6-1401 to 8-6-1405.

Transfer station permits, §8-6-706.

Eminent domain.

Regional planning districts and boards, §8-6-715.

Facilities.

Financial assurance, §§8-6-1601 to 8-6-1604.

Siting high-impact solid waste management facilities, §§8-6-1501 to 8-6-1504.

Application processing, §8-6-1503.

Definitions, §8-6-1502.

Legislative intent, §8-6-1501.

Presumptions, §8-6-1504.

Fees.

Landfill disposal fees.

Generally, §§8-6-1001 to 8-6-1005.

Management and recycling fund.

Collection, §8-6-607.

SOLID WASTE MANAGEMENT

—Cont'd

Fees —Cont'd

Management and recycling fund

—Cont'd

Computation, §8-6-611.

Landfill disposal fees, §8-6-606.

Recycling.

Used tires, §8-9-404.

Regional planning districts and boards.

Rents, fees and charges, §8-6-714.

Sanitary landfills.

Licensing, §8-6-909.

Financial assurance, §§8-6-1601 to 8-6-1604.

Allowable mechanisms, §8-6-1603.

Closure.

Procedures generally, §8-6-1603.

Corrective action.

Procedures generally, §8-6-1603.

Definitions, §8-6-1602.

Funds.

Solid waste performance bond fund, §8-6-1604.

Mechanisms allowable to demonstrate financial assurance, §8-6-1603.

Performance bonds.

Solid waste performance bond fund, §8-6-1604.

Post-closure care.

Procedures generally, §8-6-1603.

Procedures generally, §8-6-1603.

Purpose of subchapter, §8-6-1601.

Solid waste performance bond fund, §8-6-1604.

Fines.

Regional planning districts and boards.

Violations of provisions, §8-6-722.

Funds.

Landfill post-closure trust fund, §§8-6-1001 to 8-6-1005.

Management and recycling fund, §§8-6-601 to 8-6-611.

Solid waste performance bond fund.

Financial assurance, §8-6-1604.

Haulers of solid waste.

Licensure, §8-6-721.

Hearings.

Landfill and transfer station permits, issuance, §8-6-706.

Unlawful dumping.

Order to remove, §8-6-505.

Household hazardous waste storage or processing centers.

Permit requirements, §8-6-223.

SOLID WASTE MANAGEMENT

—Cont'd

Incinerators.

Disposal of incinerator ash and petroleum contaminated soils, §§8-6-1201 to 8-6-1207.

Inspections.

Records and examinations, §8-6-214.

Landfill permits, §8-6-706.**Landfill post-closure trust fund**,

§§8-6-1001 to 8-6-1005.

Administration, §8-6-1002.

Creation, §8-6-1002.

Definitions, §8-6-1001.

Deposit of funds, §8-6-1002.

Landfill disposal fees.

Assessment, §8-6-1003.

Civil penalties for failure to pay, §8-6-1005.

Collection, §8-6-1004.

Failure to pay, §8-6-1005.

Imposition, §8-6-1003.

Payment, §8-6-1004.

Use of funds.

Third party restriction, §8-6-1002.

Landfills.

Financial assurance, §§8-6-1601 to 8-6-1604.

Landfill post-closure trust fund, §§8-6-1001 to 8-6-1005.

Landfill service areas, §§8-6-1101 to 8-6-1105.

Residential use, §§8-6-1401 to 8-6-1405.

Sanitary landfills, §§8-6-901 to 8-6-909.

Landfill service areas, §§8-6-1101 to 8-6-1105.

Applicability of subchapter.

Expansion outside district, §8-6-1105.

Construction of subchapter, §8-6-1102.

Definitions, §8-6-1103.

Exemption from applicability.

Expansion outside district, §8-6-1105.

Legislative findings, §8-6-1101.

Purpose, §8-6-1102.

Liberal construction of subchapter, §8-6-1102.

Public policy declaration, §8-6-1101.

Purpose of subchapter, §8-6-1102.

Transportation of solid waste outside district, §8-6-1104.

Liability.

Third parties.

Omissions by third party.

Liability not imputed, §8-6-205.

SOLID WASTE MANAGEMENT

—Cont'd

Licenses.

Haulers of solid waste.

Regional planning districts and boards, §8-6-721.

Sanitary landfills.

General provisions, §§8-6-901 to 8-6-909.

Litter control.

General provisions, §§8-6-401 to 8-6-418.

Penalties, §8-6-204.

Prohibited acts, §8-6-205.

Local governments.

Finance.

Regional planning districts and boards.

Bond issues generally, §§8-6-801 to 8-6-814.

Restriction on local government bonds and pledges, §8-6-713.

General provisions, §§8-9-101 to 8-9-415.

Recycling.

Governmental entities.

Purchasing of recyclables by governmental entities, §8-9-204.

Local standards, §8-6-209.**Long-term environmental projects, §§8-5-901 to 8-5-905.****Management and recycling fund,**

§§8-6-601 to 8-6-611.

Citation of title, §8-6-601.

Commission.

Defined, §8-6-603.

Construction and interpretation.

Subchapter to be construed liberally, §8-6-602.

Creation, §8-6-605.

Definitions, §8-6-603.

Distribution of funds to regional solid waste management districts, §8-6-615.

Establishment, §8-6-605.

Fees.

Collection, §8-6-607.

Landfill disposal fees, §8-6-606.

Landfill disposal fees, §8-6-606.

Legislative findings and intent, §8-6-602.

Penalties.

Permittees.

Failure to pay fees, §8-6-608.

Permittees.

Defined, §8-6-603.

SOLID WASTE MANAGEMENT

—Cont'd

Management and recycling fund

—Cont'd

Permittees —Cont'd

Fees.

Landfill disposal fees, §8-6-606.

Penalties.

Failure to pay, §8-6-608.

Plans.

Recycling plans.

Implementation, §8-6-604.

Recycling.

Defined, §8-6-603.

Plans.

Implementation, §8-6-604.

Rules and regulations.

Commission to adopt, §8-6-610.

State departments and agencies.

Duties, §8-6-602.

Title of subchapter, §8-6-601.

Management systems.

Defined, §8-6-203.

Financial assurance, §§8-6-1601 to 8-6-1604.

Municipalities.

Municipal solid waste management systems.

Planning requirements, §8-6-211.

Medical waste incineration**facilities, §§8-6-1301 to 8-6-1307.**

Applicability of subchapter, §8-6-1304.

Construction and interpretation of provisions, §8-6-1303.

Definitions, §8-6-1302.

Legislative findings, §8-6-1301.

Permits.

Limitations, §8-6-1306.

Procedure, §8-6-1305.

Transferability, §8-6-1305.

Purpose, §8-6-1301.

Motor vehicles.

Recycling.

Lead-acid batteries, §8-9-303.

Used motor oil, §8-9-304.

Used tires, §§8-9-401 to 8-9-415.

Waste tire collection center.

Establishment by board, §8-6-718.

Municipalities.

Agreements authorized, §8-6-210.

Contents, §8-6-210.

Defined, §8-6-203.

Local standards, §8-6-209.

Management systems.

Municipal solid waste management systems.

Planning requirements, §8-6-211.

SOLID WASTE MANAGEMENT

—Cont'd

Newspaper recycling advisory**committee**, §§8-9-501 to 8-9-506.

Compliance schedule, §8-9-504.

Creation, §8-9-501.

Goals.

Attainment, §8-9-505.

Members, §8-9-502.

Purpose, §8-9-503.

Achievement, §8-9-506.

Notice.Landfill and transfer station permits,
issuance, §8-6-706.**Open burning of residential yard
waste**, §§8-6-1701 to 8-6-1704.**Orders.**

Unlawful dumping.

Removal order, §8-6-505.

Ordinances.

Local standards.

Authority of locality to set by
ordinance, §8-6-209.**Penalties**, §8-6-204.Disposal of incinerator ash and
petroleum contaminated soils.Violations of subchapter provisions,
§8-6-1207.

Landfill disposal fees.

Failure to pay, §8-6-1005.

Management and recycling fund.

Permittees.

Failure to pay fees, §8-6-608.

Recycling.

Penalties and procedure, §8-9-105.

Regional planning districts and
boards.

Violations of provisions, §8-6-722.

Residential use of landfills, §8-6-1405.

Sanitary landfills, §8-6-902.

Performance bonds.

Financial assurance.

Solid waste performance bond fund,
§8-6-1604.**Permits.**

Applicants, §8-6-219.

Applicability, §8-6-219.

Defined, §8-6-603.

Landfill permits, §8-6-706.

Penalties, §8-6-204.

Regional planning districts and
boards.

Certificates of need, §8-6-706.

Required, §8-6-205.

Transfer station permits, §8-6-706.

Person.

Defined, §8-6-203.

SOLID WASTE MANAGEMENT

—Cont'd

Petroleum contaminated soils.Disposal of incinerator ash and
petroleum contaminated soils,
§§8-6-1201 to 8-6-1207.**Planning.**Municipal solid waste management
systems, §8-6-211.Regional planning districts and
boards.

Bond issues, §§8-6-801 to 8-6-814.

General provisions, §§8-6-701 to
8-6-724.Statewide solid waste management
plan, §§8-6-1901 to 8-6-1904.**Plans.**

Management and recycling fund.

Recycling plans.

Implementation, §8-6-604.

Pollution prevention, §§8-10-201 to
8-10-405.

Battery sale and disposal, §8-10-301.

Definitions, §8-10-203.

Duty to effectuate, §8-10-205.

Legislative intent, §8-10-202.

Powers to effectuate, §8-10-205.

Short title of act, §8-10-201.

Waste minimization hierarchy,
§8-10-204.**Presumptions.**

Unlawful actions.

Rebuttable presumptions, §8-6-205.

Prohibited acts, §8-6-205.

Penalties, §8-6-204.

Public schools.Recycling by governmental entities,
§8-9-203.Purchasing of recyclables by
governmental entities, §8-9-204.**Purpose of act**, §8-6-202.**Records.**

Inspection, §8-6-214.

Maintenance, §8-6-214.

Recycling.

Conflict with federal laws, §8-9-103.

Construction of chapter, §8-9-102.

Declaration of public policy, §8-9-101.

Definitions, §8-9-104.

Recyclable items, §8-9-301.

Used tires, §8-9-402.

Duties of department, §8-9-202.

Governmental entities.

Preferential purchasing of recycled
materials or products, §8-9-204.

Purchasing of recyclables, §8-9-204.

Recycling by, §8-9-203.

SOLID WASTE MANAGEMENT

—Cont'd

Recycling —Cont'd

- Lead-acid batteries.
- Recyclable items, §8-9-303.
- Management and recycling fund, §§8-6-601 to 8-6-611.
- Newspaper recycling advisory committee, §§8-9-501 to 8-9-506.
- Penalties and procedure, §8-9-105.
- Plastic container labeling.
 - Recyclable items, §8-9-302.
- Policy goals, §8-9-101.
- Powers of department, §8-9-202.
- Used motor oil.
 - Recyclable items, §8-9-304.
- Used tires, §§8-9-401 to 8-9-415.
 - Accountability for disbursement of money to programs, §8-9-405.
 - Business plans, accountability requirements, §8-9-408.
 - Consolidation of programs, incentives, §8-9-410.
 - Declaration of public policy, §8-9-401.
 - Electronic uniform used tire manifest system.
 - Entities required to report into, §8-9-407.
 - Use of system required, §§8-9-401, 8-9-404.
 - Enforcement and penalties, §8-9-415.
- Fees.
 - Applicability, §8-9-413.
 - Commercial generator fees, §8-9-404.
 - Extra-large tires, additional fees, §8-9-412.
 - Import fees, §8-9-404.
 - Rim removal, §8-9-404.
- Legislative intent, §8-9-401.
- Operation of waste tire sites.
 - Prohibited activities, §8-9-403.
 - Requirements, §8-9-403.
- Performance and efficiency evaluations of programs, §8-9-409.
- Pollution control and ecology commission, powers and duties, §8-9-414.
- Program reimbursements, §8-9-405.
- Registration of tire retailers, §8-9-404.
- Tire collection centers, §8-9-405.
- Transporter licenses, §8-9-411.
- Violations of chapter.
 - Penalties and procedure, §8-9-105.

SOLID WASTE MANAGEMENT

—Cont'd

Regional solid waste management districts.

- Adoption of regional standards, §8-6-724.
- Agreements implementing subchapter, §8-6-709.
 - Contents, §8-6-709.
 - Purposes, §8-6-709.
- Alternative formation of original districts, §8-6-723.
- Boards.
 - Composition, §8-6-703.
 - Creation, §8-6-703.
 - Defined, §8-6-702.
 - Duties, §8-6-704.
 - Members, §8-6-703.
 - Terms, §8-6-703.
 - Powers, §8-6-704.
 - Service area boards, §8-6-707.
- Bond issues.
 - Generally, §§8-6-801 to 8-6-814.
- Commission.
 - Defined, §8-6-702.
- Construction and interpretation.
 - Subchapter to be construed liberally, §8-6-701.
- Definitions, §8-6-702.
 - Opportunity to recycle, §8-6-720.
- Department.
 - Defined, §8-6-702.
- Disposal sites.
 - Defined, §8-6-702.
- Districts.
 - Alternative formation of original districts, §8-6-723.
 - Creation, §8-6-703.
 - Defined, §8-6-702.
- District solid waste management system, §8-6-711.
- Eminent domain, §8-6-715.
- Facility standards, §8-6-222.
- Fines.
 - Violations of provisions, §8-6-722.
- Haulers of solid waste.
 - Licensure, §8-6-720.
- Interested parties.
 - Defined, §8-6-702.
 - Permits.
 - Certificates of need, §8-6-706.
- Interlocal agreements.
 - Alternative formation of original districts, §8-6-723.
- Landfills.
 - Defined, §8-6-702.
 - Permits, §8-6-706.
- Legislative findings, §8-6-701.

SOLID WASTE MANAGEMENT

—Cont'd

Regional solid waste management districts —Cont'd

Licenses.

Haulers of solid waste, §8-6-721.

Local government bonds and pledges.

Solid waste management system.

Restrictions, §8-6-713.

Management and recycling fund.

Distribution of funds, §8-6-615.

Materials in the recycling process.

Defined, §8-6-702.

Misdemeanors.

Violations of provisions, §8-6-722.

Motor vehicles.

Waste tire collection center.

Establishment by board, §8-6-718.

Needs assessments, §§8-6-705, 8-6-716.

Failure to provide, §8-6-705.

Grant awards for development of initial needs assessments, §8-6-705.

Required, §8-6-705.

Opportunity to recycle.

Board ensuring of residential recycling, §8-6-720.

Penalties.

Violations of provisions, §8-6-722.

Permits.

Issuance, §8-6-706.

Purpose of subchapter, §8-6-701.

Recyclable materials.

Defined, §8-6-702.

Recyclable materials collection centers.

Defined, §8-6-702.

Establishment, §8-6-720.

Recyclables.

Defined, §8-6-702.

Recycling.

Defined, §8-6-702.

Regional composting program.

Establishment, §8-6-719.

Regional needs assessment, §8-6-716.

Regional standards, adoption, §8-6-724.

Regulation of solid waste disposal, §8-6-712.

Rents, fees and charges.

Assessment, §8-6-714.

Rules and regulations.

Commission to adopt procedures and regulations, §8-6-708.

Service areas.

Approval, §8-6-707.

Boards, §8-6-707.

Composition, §8-6-707.

Designation, §8-6-707.

SOLID WASTE MANAGEMENT

—Cont'd

Regional solid waste management districts —Cont'd

Service areas —Cont'd

Management, §8-6-707.

Site standards, §8-6-222.

Solid waste.

Defined, §8-6-702.

Solid waste management plan.

Regulation of solid waste disposal, §8-6-712.

Solid waste management responsibility, §8-6-710.

Solid waste management system.

Defined, §8-6-702.

District solid waste management system, §8-6-711.

Responsibilities of counties and municipalities, §8-6-710.

Restriction on local government bonds and pledges, §8-6-713.

Source separation.

Defined, §8-6-702.

Standards, adoption, §8-6-222.

Transfer station permits, §8-6-706.

Waste tire collection center.

Establishment, §8-6-718.

Yard waste.

Defined, §8-6-702.

Reports.

Inspection, §8-6-214.

Maintaining, §8-6-214.

Residential use of landfills,

§§8-6-1401 to 8-6-1405.

Land use restrictions, §8-6-1404.

Pollution control and ecology commission.

Powers and duties, §8-6-1402.

Rules and regulations, §8-6-1403.

Provision violations, §8-6-1405.

Purpose of subchapter, §8-6-1401.

Restrictions, §8-6-1404.

Rights of entry.

Inspections, §8-6-214.

Rules and regulations.

Commission.

Residential use of landfills, §8-6-1403.

Disposal of incinerator ash and petroleum contaminated soils.

Rulemaking authority, §8-6-1204.

Existing rules and regulations to remain in full force, §8-6-208.

Legislative review, §8-6-221.

Management and recycling fund.

Commission to adopt, §8-6-610.

SOLID WASTE MANAGEMENT

—Cont'd

Rules and regulations —Cont'd

Prohibited acts, §8-6-205.

Penalties, §8-6-204.

Regional planning districts and boards.

Commission to adopt procedures and regulations, §8-6-708.

Licensing haulers of solid waste.

Promulgation authority, §8-6-721.

Residential use of landfills, §8-6-1403.

Sanitary landfills, §§8-6-901 to 8-6-909.

Administration of subchapter, §8-6-905.

Classification of licenses, §8-6-906.

Commission.

Duties, §8-5-905.

Procedures, §8-6-902.

Definitions, §8-6-901.

Enforcement of subchapter, §8-6-905.

Financial assurance, §§8-6-1601 to 8-6-1604.

Licenses.

Apprenticeship license to operators-in-training, §8-6-908.

Eligibility, §8-6-908.

Examination, §8-6-908.

Fees, §8-6-909.

Fees, §8-6-909.

Deposit of fees, §8-6-906.

Licensing committee.

Classification of licenses, §8-6-906.

Members, §8-6-904.

Restrictions, §8-6-904.

Licensing policy, §8-6-907.

Qualifications, §8-6-908.

Renewal of license, §8-6-908.

Fee, §8-6-909.

Required, §8-6-903.

Waiver of requirements, §8-6-903.

Operators-in-training apprenticeship licenses, §8-6-908.

Penalties.

Violations of provisions, §8-6-902.

Rulemaking authority, §8-6-905.

Yard waste.

Collection of landfill gas from fugitive yard waste for conversion to energy, §8-6-220.

Short title, §8-6-201.**Siting high-impact solid waste management facilities**, §§8-6-1501 to 8-6-1504.

Application processing, §8-6-1503.

Definitions, §8-6-1502.

Legislative intent, §8-6-1501.

SOLID WASTE MANAGEMENT

—Cont'd

Siting high-impact solid waste management facilities —Cont'd

Presumptions, §8-6-1504.

State departments and agencies.

Management and recycling fund.

Duties, §8-6-602.

Recycling by governmental entities, §8-9-203.

Purchasing of recyclables by governmental entities, §8-9-204.

Statewide solid waste management plan, §§8-6-1901 to 8-6-1904.

Definitions, §8-6-1903.

Development and implementation, §8-6-1904.

Legislative findings, §8-6-1902.

Title of provisions, §8-6-1901.

Third parties.

Omissions by third parties.

Liability not imputed, §8-6-205.

Title of subchapter, §8-6-201.**Transfer station permits**, §8-6-706.

Household hazardous waste storage or processing centers, §8-6-223.

Transportation.

Penalties, §8-6-204.

Prohibited acts, §8-6-205.

Universities and colleges.

Recycling by governmental entities, §8-9-203.

Purchasing of recyclables by governmental entities, §8-9-204.

Unlawful dumping.

Agricultural operations, §8-6-509.

Complaints, §8-6-505.

Definitions, §8-6-503.

Effectiveness of regulations and orders, §8-6-510.

Enforcement, §8-6-508.

Order to remove, §8-6-505.

Challenge, §8-6-505.

Hearing on challenge to order, §8-6-505.

Penalties, §8-6-506.

Purpose of act, §8-6-502.

Sanctions for unpaid fines and costs, §8-6-506.

Short title, §8-6-501.

Yard waste, §8-6-220.

Yard waste.

Collection of landfill gas from fugitive yard waste for conversion to energy, §8-6-220.

Defined, §§8-6-220, 8-6-702.

Regional composting program.

Establishment by board, §8-6-719.

SOLID WASTE MANAGEMENT

—Cont'd

Yard waste —Cont'd

Unlawful disposal, §8-6-220.

STATE DEPARTMENTS AND AGENCIES.**Hazardous substance emergencies.**

Remedial action trust fund.

Compliance of state and federal entities, §8-7-507.

Public employees' chemical right to know act.

General provisions, §§8-7-1001 to 8-7-1016.

Solid waste management.

Recycling by governmental entities, §8-9-203.

Purchasing of recyclables by governmental entities, §8-9-204.

STATEWIDE SOLID WASTE MANAGEMENT PLAN ACT, §§8-6-1901 to 8-6-1904.**STAYS.****Pollution.**

Water pollution.

Appeals.

Proceedings stayed, §8-4-228.

STIPULATIONS.**Environmental audit reports.**

Waiver of privilege regarding certain information, §8-1-306.

STORAGE.**Hazardous substance emergencies.**

Remedial action trust fund.

Definition of storage, §8-7-503.

Petroleum products.

Storage tanks of regulated substances, §§8-7-801 to 8-7-817.

STREET LIGHTS.**Shielded outdoor lighting, §§8-14-101 to 8-14-107.****SUBPOENAS.****Hazardous waste management.**

Procedure, §8-7-213.

SURVEYS AND SURVEYORS.**Hazardous waste management.**

Facility owners.

Duties, §8-7-225.

T**TAXATION.****Pollution.**

Underground salt water disposal systems.

Denial of tax deductions.

Grounds, §8-5-503.

Wastewater privatization.

Exemption from taxes, §8-5-611.

THEFT.**Recyclable materials.**

Regional recycling programs.

Unlawfully diverting recyclable materials, §8-6-720.

THIRD PARTIES.**Hazardous waste management.**

Resource reclamation.

Omissions of third party.

Liability not imputed, §8-7-307.

Petroleum products.

Storage tank fund.

Claims of third parties, §8-7-908.

Solid waste management.

Omissions by third parties.

Liability not imputed, §8-6-205.

TIRES.**Litter control.**

Old vehicle tires.

Defined, §8-6-403.

Used tires.

Collection centers, §8-6-718.

Recycling, §§8-9-401 to 8-9-415.

Accountability for disbursement of money to programs, §8-9-405.

Business plans, accountability requirements, §8-9-408.

Consolidation of programs, incentives, §8-9-410.

Declaration of public policy, §8-9-401.

Definitions, §8-9-402.

Electronic uniform used tire manifest system.

Entities required to report into, §8-9-407.

Use of system required, §§8-9-401, 8-9-404.

Enforcement and penalties, §8-9-415.

TIRES —Cont'd**Used tires —Cont'd****Recycling —Cont'd****Fees.**

Applicability, §8-9-413.

Commercial generator fees,
§8-9-404.Extra-large tires, additional fees,
§8-9-412.

Import fees, §8-9-404.

Rim removal, §8-9-404.

Legislative intent, §8-9-401.

Operation of waste tire sites,
§8-9-403.Performance and efficiency
evaluations of programs,
§8-9-409.Pollution control and ecology
commission, powers and duties,
§8-9-414.

Program reimbursements, §8-9-405.

Registration of tire retailers,
§8-9-404.

Tire collection centers, §8-9-405.

Transporter licenses, §8-9-411.

Waste tire collection centers, §8-6-718.

TRADE SECRETS.**Petroleum products.**

Storage tanks of regulated substances.

Confidentiality of information.

Public officers and employees.

Violation of section constitutes
misdemeanor, §8-7-811.**Pollution.**

Air pollution.

Confidentiality, §8-4-308.

Emission data.

Public record, §8-4-308.

Source is trade secret, §8-4-308.

Misdemeanor for revealing,
§8-4-308.**Public officers and employees.**

Chemical right to know act.

Disclosure requirements, §8-7-1012.

Petroleum products.

Storage tanks of regulated
substances.

Confidentiality of information.

Violation of section constitutes
misdemeanor, §8-7-811.**TRANSPORTATION.****Hazardous waste management.**

Defined, §8-7-203.

Rules and regulations, §8-7-224.

Solid waste management.

Penalties, §8-6-204.

Prohibited acts, §8-6-205.

TRASH.**Litter control**, §§8-6-401 to 8-6-418.**Solid waste management**, §§8-6-201 to
8-6-510.**U****UNDERGROUND SALT WATER,**

§§8-5-501 to 8-5-504.

**UNDERGROUND STORAGE OF
GAS.****Storage tanks of regulated****substances**, §§8-7-801 to 8-7-817.**UNITED STATES.****Hazardous substance emergencies.**

Remedial action trust fund.

Compliance of federal and state
entities, §8-7-507.**Hazardous waste management.**Department designated as state
agency for participation in federal
program, §8-7-208.**Pollution.**

Commission.

Cooperation with agency of another
state or United States, §8-4-215.**V****VENUE.****Hazardous waste management.**Legal proceedings affecting hazardous
waste treatment, §8-7-207.**Pollution.**

Water pollution.

Appeals, §8-4-225.

**VOLUNTARY CLEAN-UP OF
ABANDONED COMMERCIAL
SITES**, §§8-7-1101 to 8-7-1104.**Authority of department**, §8-7-1103.**Definitions**, §8-7-1102.**Policy**, §8-7-1101.**Process**, §8-7-1104.**Revolving loan fund**, §8-7-1103.**W****WAIVER.****Environmental audit reports.**Environmental audit privilege,
§8-1-304.**Solid waste management.**

Sanitary landfills.

Licenses, waiver of requirements,
§8-6-903.

WASTE.**Litter control**, §§8-6-401 to 8-6-418.**Solid waste management**, §§8-6-201 to 8-6-510.**WASTEWATER MANAGEMENT.****Privatization.**

Applicability of subchapter, §8-5-605.

Assignments.

Contracts and service agreements,
§8-5-608.

Bids and bidding.

Privatization contracts, service
agreements, etc.Exemptions from bidding
requirements, §8-5-609.

Bond issues.

Industrial facilities.

Projects as industrial facilities for
certain purposes, §8-5-612.

Chief executive.

Defined, §8-5-603.

Citation of subchapter, §8-5-601.

Clerks.

Defined, §8-5-603.

Construction and interpretation.

Applicability of provisions, §8-5-605.

Determination that wastewater
project is industrial facility for
other acts, §8-5-612.

Liberal construction, §8-5-604.

Contracts.

Privatization contracts.

Assignment, §8-5-608.

Competitive bidding provisions
inapplicable, §8-5-609.

Generally, §8-5-606.

Public service commission.

Exemption from jurisdiction of
commission, §8-5-610.

Service agreements.

Assignments, §8-5-608.

Competitive bidding provisions
inapplicable, §8-5-609.

Generally, §8-5-607.

Tax exemption on revenues,
§8-5-611.Tax exemption on revenues,
§8-5-611.

Service agreements, §8-5-607.

Assignments, §8-5-608.

Competitive bidding provisions
inapplicable, §8-5-609.

Public service commission.

Exemption from jurisdiction of
commission, §8-5-610.Tax exemption on revenues,
§8-5-611.**WASTEWATER MANAGEMENT**

—Cont'd

Privatization —Cont'd

Costs.

Defined, §8-5-603.

Counties.

Local governments.

Defined, §8-5-603.

Definitions, §8-5-603.

Facilities.

Defined, §8-5-603.

Industrial facilities.

Wastewater project as industrial
facilities for certain purposes,
§8-5-612.

Legislative policy, §8-5-602.

Local governments.

Definition of local governments,
§8-5-603.

Municipal corporations.

Local governments.

Defined, §8-5-603.

Ordinances.

Definition of ordinance, §8-5-603.

Policy of legislature, §8-5-602.

Private owners or operators.

Defined, §8-5-603.

Projects.

Solid waste disposal projects.

Defined, §8-5-603.

Wastewater projects.

Defined, §8-5-603.

Public service commission.

Contracts for privatization and
service agreements.Exemption from jurisdiction of
commission, §8-5-610.

Service agreements, §8-5-607.

Assignments, §8-5-608.

Competitive bidding provisions
inapplicable, §8-5-609.

Public service commission.

Exemption from jurisdiction of
commission, §8-5-610.Tax exemption on revenues,
§8-5-611.

Short title of subchapter, §8-5-601.

Solid waste.

Defined, §8-5-603.

Taxation.

Exemption from taxes, §8-5-611.

Title of subchapter, §8-5-601.

**WASTEWATER PLANT
OPERATORS.****Chronic noncompliance**, §§8-5-701 to
8-5-703.**Classification of wastewater plants**,
§8-5-206.

WASTEWATER PLANT OPERATORS

—Cont'd

Commission.

Defined, §8-5-201.

Duties, §8-5-205.

Powers, §8-5-205.

Counties.

Unlawful acts, §8-5-203.

Criminal law and procedure.

Penalties, §8-5-202.

Definitions, §8-5-201.**Examinations.**

Commission, §8-5-205.

Fees, §8-5-209.

Fees, §8-5-209.**Injunctions, §8-5-202.****Licenses.**

Commission, §8-5-205.

Committee.

Appointment, §8-5-204.

Compensation, §8-5-204.

Composition, §8-5-204.

Creation, §8-5-204.

Defined, §8-5-201.

Defined, §8-5-201.

Fees, §8-5-209.

Operation of plants without license,
§8-5-203.

Renewal.

Fees, §8-5-209.

Requirements, §§8-5-207, 8-5-208.

Revocation.

Violations as grounds for
administrative revocation,
§8-5-202.**Municipal corporations.**

Unlawful acts, §8-5-203.

Noncompliance.Chronic noncompliance, §§8-5-701 to
8-5-703.**Operators.**

Defined, §8-5-201.

Penalties.

Criminal penalties, §8-5-202.

Rules and regulations.

Commission, §8-5-205.

Unlawful acts.

Enumerated, §8-5-203.

Wastewater treatment plants.

Classification, §8-5-206.

Defined, §8-5-201.

Illegal operation, §8-5-203.

WATERCOURSES.**Litter control, §8-6-418.****Wastewater plant operators,
§§8-5-201 to 8-5-209.****WATER POLLUTION.****Actions.**Unlawful actions enumerated,
§8-4-217.**Appeals.**

Commission.

Final orders, rules or regulations.

Entitlement, §8-4-222.

Notice of appeal required, §8-4-223.

Returns, §8-4-226.

Parties to the appeal, §8-4-224.

Proceedings.

Presumptions, §8-4-229.

Final orders, rules or regulations.

Entitlement, §8-4-222.

Review by court, §8-4-227.

Stay of proceedings.

General requirements, §8-4-228.

Venue.

Change of venue, §8-4-225.

Bonds, surety.

Permits.

Financial assurance of applicants,
§8-4-203.**Capital expenditures for****maintaining permit compliance.**

Reimbursement of costs, §8-4-203.

**Chronic noncompliance, §§8-5-701 to
8-5-703.****Citation of act, §8-4-101.****Commission.**Appeals from determination of
commission, §8-4-222.

Court review, §8-4-227.

Notice, §8-4-223.

Parties, §8-4-224.

Presumption of validity of
commission actions, §8-4-229.

Return by commission, §8-4-226.

Stay of proceedings, §8-4-228.

Venue, §8-4-225.

Conclusiveness of commission actions,
§8-4-213.

Declaratory orders, §8-4-211.

Hearings.

Authority as to, §8-4-210.

Inspections or conducting surveys.

Authority as to, §8-4-216.

Intergovernmental cooperation,
§8-4-215.

Investigations.

Authority as to, §8-4-210.

Nutrient water quality trading
programs.

Advisory panel, §8-4-233.

Regulations regarding, §8-4-232.

Orders.

Conclusiveness of commission
actions, §8-4-213.

WATER POLLUTION —Cont'd**Commission —Cont'd****Orders —Cont'd****Hearings.**

Prerequisite to issuance of order,
§8-4-212.

Presumption of validity, §8-4-229.

Permits.

Application for permit.

Notice required, §8-4-203.

Authority as to, §8-4-203.

Powers and duties, §8-4-201.

Generally, §8-4-201.

Presumption of validity of commission
actions, proceedings, etc.,
§8-4-229.

Rules and regulations.**Adoption.**

Authority as to, §8-4-202.

Conclusiveness of commission
actions, §8-4-213.

Issuance, amendment, or repeal,
§8-4-202.

Presumption of validity, §8-4-229.

Service of process.

Notice, orders or other instruments,
§8-4-214.

Authority as to, §8-4-214.

State water pollution control agency.

Designation, §8-4-206.

Permits.

Administration of permit program,
§8-4-208.

Conflicts of interest prohibiting
participation of certain
persons in permit approval
procedures, §8-4-209.

Powers and duties as, §8-4-207.

Violation of provisions.

Hearings, §8-4-218.

Conduct of hearing, §8-4-219.

Order, §8-4-221.

Orders, §8-4-221.

Definitions, §8-4-102.**Discharge into waters of the state.**

Defined, §8-4-102.

Disposal systems, §8-4-102.

Information to be submitted to
department, §8-4-216.

Underground salt water disposal
systems, §§8-5-501 to 8-5-504.

Enforcement action, works subject to.

Statement of noncompliance by
director, §8-4-203.

Escrow accounts.**Permits.**

Financial assurance of applicants,
§8-4-203.

WATER POLLUTION —Cont'd**Fees.**

Short-term activity authorization,
§8-4-234.

Hearings.

Application for permit.

Denial, §8-4-205.

Modification, §8-4-205.

Revocation, §8-4-205.

Commission.

Application for permit, §8-4-203.

Authority as to, §8-4-210.

Violation of provisions.

Conduct of hearing, §8-4-219.

Notice requirements, §8-4-218.

Order of commission without
hearing, §8-4-220.

Industrial waste.

Definition of industrial waste,
§8-4-102.

Injunctions, §8-4-103.**Insurance.****Permits.**

Financial assurance of applicants,
§8-4-203.

Letters of credit.**Permits.**

Financial assurance of applicants,
§8-4-203.

**Long-term environmental projects,
§§8-5-901 to 8-5-905.****Misdemeanors, §8-4-103.****Nutrient water quality trading
programs.**

Advisory panel, §8-4-233.

Regulations regarding, §8-4-232.

**Oil and gas, storage or application
of fluids generated from
exploration or production.**

Closure, §8-4-203.

Orders.

Commission, §8-4-211.

Conclusiveness of commission
actions, §8-4-213.

Conclusiveness of commission actions,
§8-4-213.

Hearings, §8-4-212.

Presumption of validity, §8-4-229.

Violation of provisions, §8-4-221.

Commission order without hearing,
§8-4-221.

Penalties, §8-4-103.**Permits, §8-4-203.****Commission.**

State water pollution control agency,
commission acting as.

Administration of permit program,
§8-4-208.

WATER POLLUTION —Cont'd**Permits —Cont'd**

Commission —Cont'd

State water pollution control agency,
commission acting as —Cont'd

Conflicts of interest prohibiting
participation of certain
persons in approval of permit
applications, §8-4-209.

Denial, revocation or modification.

Hearings, §8-4-205.

Denial of permit.

Hearing upon denial, §8-4-205.

Engineer assessment required with
permit application, §8-4-203.

Financial assurance of applicants,
§8-4-203.

Liquid animal waste management
system, §8-4-203.

Modification.

Hearing upon modification, §8-4-205.

Prohibited acts without permit,
§8-4-217.

Revocation, §8-4-204.

Grounds, §8-4-204.

Hearing upon revocation, §8-4-205.

Transferability of permit, §8-4-203.

Trust fund contribution fee required
for construction resulting in
capacity increase, §8-4-203.

Person.

Defined, §8-4-102.

Prohibited acts, §8-4-217.**Rules and regulations.**

Presumption of validity, §8-4-229.

Sewage.

Defined, §8-4-102.

Definition of sewer systems, §8-4-102.

Inspections and informations of
sewage systems, §8-4-216.

**Short-term activity authorization,
§8-4-234.****State water pollution control
agency.**

Commission's acting as.

Generally, §§8-4-206 to 8-4-209.

**Surface water supply protection,
§§8-10-401 to 8-10-405.**

Definitions, §8-10-403.

Legislative findings, §8-10-402.

Petroleum pipelines crossing
watercourses.

Cut-off valve and training,
§8-10-404.

Risk mitigation and response plan,
§8-10-405.

Purpose, §8-10-402.

Title, §8-10-401.

WATER POLLUTION —Cont'd**Treatment works.**

Definition of treatment works,
§8-4-102.

Trust funds.

Permits.

Financial assurance of applicants,
§8-4-203.

Trust fund contribution fee required
for construction resulting in
capacity increase, §8-4-203.

**Underground salt water disposal
systems, §§8-5-501 to 8-5-504.****Violation of provisions.**

Commission.

Hearing.

Order of commission without
hearing, §8-4-220.

Hearings, §8-4-218.

Conduct, §8-4-219.

Notice, §8-4-218.

Order of commission without
hearing, §8-4-220.

Orders, §8-4-221.

Wastes.

Other wastes.

Definition, §8-4-102.

Wastewater plant operators.

General provisions, §§8-5-201 to
8-5-209.

**Wastewater privatization, §§8-5-601
to 8-5-612.****Wastewater treatment plants.**

General provisions, §§8-5-201 to
8-5-209.

Waters of the state.

Defined, §8-4-102.

**WATER SUPPLY AND
WATERWORKS.****Pollution.**

Surface water supply protection,
§§8-10-401 to 8-10-405.

**Surface water supply protection,
§§8-10-401 to 8-10-405.**

Definitions, §8-10-403.

Legislative findings, §8-10-402.

Petroleum pipelines crossing
watercourses.

Cut-off valve and training,
§8-10-404.

Risk mitigation and response plan,
§8-10-405.

Purpose, §8-10-402.

Title, §8-10-401.

WORK PRODUCT.**Environmental audit reports.**

Effect of chapter generally, §8-1-312.



